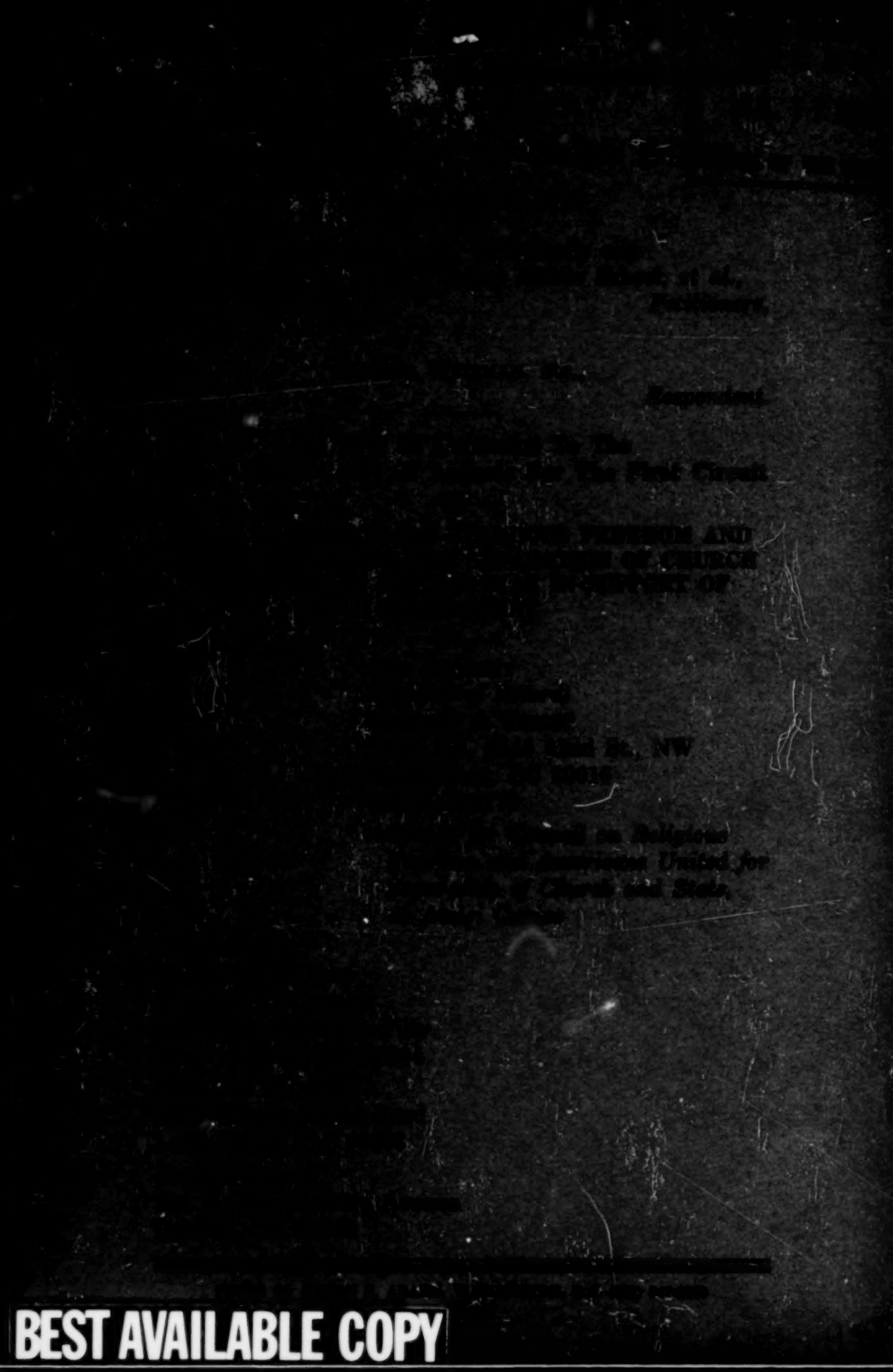

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STATEMENT OF INTEREST*

The Council on Religious Freedom is a national nonprofit organization which was formed to uphold and promote the principles of religious liberty. Its Board of Directors is composed of individuals who are active in religious affairs, some in an official capacity and some on a lay basis. Americans United for Separation of Church and State is composed of some 50,000 members of various religious beliefs and some of no religious affiliation residing throughout the United States.

Both *amici* have been involved in a number of cases involving the Religion Clauses of the First Amendment. Americans United has been active over the years in most of the major Establishment Clause cases from *Lemon v. Kurtzman*, 403 U.S. 602 (1971), to *School Dist. of Grand Rapids v. Ball*, 473 U.S. 373 (1985), and is constantly called upon by individuals who believe that government has violated constitutional proscriptions of church-state separation. Americans United is currently involved in cases now pending in the lower courts which will be directly affected by the outcome of this case.

Council on Religious Freedom has as one of its major interests the relationship of free exercise principles to non-establishment concerns with the view of maximizing religious freedom.

Both *amici* are particularly apprehensive about the scrapping of approximately 30 years of judicial precedent and the large body of law that has been established to be replaced by an untried and, in the opinion of *amici*, a defective test currently advanced by petitioners and the government.

SUMMARY OF ARGUMENT

Hundreds of federal and state court decisions (Appendix A) testify that the *Lemon* test that this Court synthesized in 1971 from its earlier church-state decisions is a workable and integral part of law of the Establishment Clause of the First Amendment. For this Court to radically alter

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* This brief is submitted with the written consent of both parties.

that law, as requested by petitioners, the Solicitor General, and numerous *amici curiae*, would distort the roles of both church and state when their interests impact upon both individual citizens and public life; would deviate seriously from the original intent of the Framers of the First Amendment; and would introduce uncertainty, if not chaos, into a difficult area of constitutional law. In addition, the new test proposed by the Solicitor General would be neither helpful nor consistent with the principle of individual freedom embodied in the Religion Clauses. For these reasons, plus others stated in this *amicus* brief, Council on Religious Freedom and Americans United for Separation of Church and State urge this Court either to retain the traditional three-part *Lemon* test when it renders its decision in this case or to base any change in Establishment Clause theory on the insightful endorsement test that has been articulated by Justice O'Connor.

ARGUMENTS

INTRODUCTION

Petitioners seek to overturn judicial precedent and have this Court, for the first time, validate religious exercises conducted as a part of public junior high school graduation ceremonies. Petitioners, aided by the Solicitor General of the United States, argue that an agent of a school district, in this case a school principal, may include prayer in junior high school graduations without offending the non-establishment proscriptions of the First Amendment to the United States Constitution.

The Solicitor General asked this Court to hold that "the practice at issue here clearly does not violate the Establishment Clause, because it does not coerce religious exercise or bring to bear other forms of compulsion to conform." Brief for United States in Support of Pet. for Cert. at 18. According to the government, the religious portion of the graduation ceremony conducted by a member of the clergy is only a demonstration of "respect [for] the religious heritage of the community." *Id.*

The government attempts to enlarge the scope of this case beyond its specific facts. For example, its *amicus* brief specifically suggests that the Court "reconsider the application of the *Lemon* test to the attempt to accommodate the Nation's heritage in our public life." *Id.* at 8.[1]

I. THIS COURT'S HOLDING IN *MARSH* IS NOT APPLICABLE TO RELIGIOUS WORSHIP AT AN EVENT CONDUCTED BY PUBLIC SCHOOL EMPLOYEES ACTING IN THEIR OFFICIAL CAPACITY.

Petitioners and the Solicitor General rely largely on this Court's decision in *Marsh v. Chambers*, 463 U.S. 783 (1983). In *Marsh*, however, this Court specifically noted that the individual claiming injury by the practice was an adult, presumably not readily susceptible to "religious indoctrination." *Id.* at 792. Apparently, in order to fit a square peg into a round hole, the Solicitor General argues that a graduation ceremony is a civic ceremony occurring only once a year and is addressed not to children alone but to families as a whole. Brief for United States in Support of Pet. for Cert. at 18. The Solicitor General does, however, claim to "recognize that the special character of the public school setting has heightened this Court's sensitivity to subtle forms of coercion." *Id.* at 18.[2] The government argues that there can be no feelings of coercion experienced at a student's graduation because families and friends also attend. Brief for United States at 8.

It is somewhat difficult to understand how a parent's presence in a graduation audience in some way lessens

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[1] It is not clear that the government pursues only a reconsideration of *Lemon* as applied to celebrations of the nation's heritage in our public life. In its brief on the merits, the government states that "[t]his case offers the Court the opportunity to replace the *Lemon* test with the more general principle implicit in the traditions relied upon in *Marsh* and explicit in the history of the Establishment Clause. Brief for the United States at 6.

[2] In its brief on the merits, the government states that "heightened sensitivity may be warranted when evaluating the factors described above [classroom setting]." The government, however, states that "no special rule for children is justified in the setting of a public school graduation." Brief for United States at 26-27.

the indirect coercive pressure and symbolic impact that a student experiences when an act of religious worship is brought directly into a public school function at which graduates are the focus of attention.[3]

It is true that in *Marsh* this Court observed that there had been an unbroken practice for legislative prayers for two centuries. This Court concluded that "there is no real threat 'while this Court sits.' " *Id.* at 795. In this case, however,we are not dealing simply with adult legislators elected presumably because of their ability to be independent thinkers. Rather, we are concerned with children at the conclusion of their tax-supported junior high school experience. Perhaps petitioners and the government are telling a prospective graduate that, unlike the public school classroom, he or she can stay away from what the graduate might consider an offensive experience. But this of course entirely ignores the reality that the ceremony is not designed to commemorate the community's religious heritage but rather the graduate's scholastic accomplishments. It is an event where peer and parental pressure merge, thus making the election to participate or not as an honored person in the celebration a difficult and perhaps traumatic experience for the student.[4]

II. THE CONSTITUTIONALITY OF INCLUDING RELIGIOUS WORSHIP AS A PART OF A PUBLIC SCHOOL-CONDUCTED ACTIVITY IS CONTROLLED BY THE PRE-*LEMON* CASES OF *ENGEL* AND *SCHEMPP*.

It is respectfully submitted that this case does not fall within the narrow exception to this Court's holdings that religious exercises should not be part of official public

[3] Whether a child would or would not feel coerced is subjective, and the use of a coercion test cannot aid in preventing confusion or division in the lower courts.

[4] Once the principle is established that a student can be subject to worship activity at a graduation, it will be impossible to argue over the degree of sectarianism or the content of the prayers. At one graduation, the program may be as innocuous as the Rabbi's here. At another graduation, the prayer may be pointedly sectarian.

school programs. *Amici* believe that the resolution of this case is not governed by *Marsh*, but rather, by two cases preceding this Court's *Lemon* decision. In *Engel v. Vitale*, 370 U.S. 421 (1962), this Court found unconstitutional the required daily recitation of what to some would seem to be a rather innocuous prayer devised, written, and mandated by the New York State Board of Regents. Petitioners and the government here suggest that there is really no violation of the no-establishment principles of the First Amendment since Rabbi Gutterman's invocation and benediction with their reference to God in no way compelled the non-adherents attending the graduation ceremony to change their beliefs. But, of course, exactly the same argument could have been appropriately made as to the Regent's prayer in *Engel*.

At least the Regent's prayer was prewritten, sanitized, and free of surprises. In the case of graduation prayers, however, either the clergy would have to be precensored or students and parents would have to await the predilection of the clergyperson who was selected to find out in what way, offensively or non-offensively, he wished to celebrate the community's religious traditions.[5]

Engel was decided by this Court almost 30 years ago over the sole dissent of one justice and represents established law.[6] Important to our consideration is the fact that *Engel* was a case not involving financial aid to parochial schools, but rather religious exercises conducted for public school students. It was *Engel*, not *Lemon*, that established

[5] The government does not choose to suggest whether it views graduation prayers as only constitutional if they are rotated among the clergy. We are left to speculate as to what the government's view would be if the same denomination's clergy were used year-after-year within a community where the vast majority were members of one faith or if clergy of religions such as Islam, Hinduism, or Buddhism somehow were miraculously spared invitations to present prayers.

[6] This is not a case such as *Harmelin v. Michigan*, 59 U.S.L.W. 4839, 4841 (U.S. Jan. 27, 1991), wherein Justice Scalia suggested that *stare decisis* should be less rigidly applied where a decision is recent and represents the opinion of a closely divided Court.

the position exactly opposite that now advanced in the Solicitor General's brief. In *Engel*, 370 U.S. at 430, the Court, in discussing the reach of the Establishment and Free Exercise Clauses of the First Amendment, stated: "Although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachments upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion . . . ."

Engel, therefore, does not support the Solicitor General's analysis. Likewise, again pre-*Lemon*, the Court in *Abington School Dist. v. Schempp*, 374 U.S. 203 (1963), also reiterated the *Engel* conclusion that the Establishment Clause does not depend upon the finding of coercion. *Id.* at 221.

In *Schempp* this Court was concerned with Bible reading in the public school. Justice Clark, who wrote the opinion in *Schempp*, was not ignorant of American history when concluding that Bible reading in the classroom violated the Establishment Clause. He noted that each house of Congress provided through its chaplain an opening prayer, and the sessions of the Supreme Court were declared open by the crier in a short ceremony with the final phrase "invoking the grace of God." He observed that it could be "truly said, therefore, that today, as in the beginning, our national life reflects a religious people who, in the words of Madison, are 'earnestly praying, as . . . in duty bound, that the Supreme Lawgiver of the Universe . . . guide them into every measure which may be worthy of his [blessing . . .]'," citing Madison's *Memorial and Remonstrance Against Religious Assessments*. *Id.* at 213.

However, Justice Clark did not conclude that because we are a religious people, school children should be subjected to religious worship as part of official public school programs. Justice Clark acknowledged that our history was imperfect.[7] He stated: "Nothing but the most telling of

[7] Justice O'Connor has commented that "[h]istorical acceptance of a practice does not in itself validate that practice under the Establishment Clause if the practice violates the values protected by that Clause, just as historical acceptance of racial or gender based discrimination does not immunize such practices from scrutiny under the 14th Amendment." *County of Allegheny v. American Civil Liberties Union*, 109 S. Ct. 3086, 3121 (1989).

personal experiences and religious persecution suffered by our forebears, . . . could have planted our belief in liberty of religious opinion any more deeply in our heritage. It is true that this liberty frequently was not realized by the colonists, but this is readily accountable by their close ties to the Mother Country. However, the views of Madison and Jefferson, preceded by Roger Williams, came to be incorporated not only in the Federal Constitution but likewise in those of most of our States." *Id.* at 214 (citations omitted).

III. THE DOCTRINE OF ORIGINAL INTENT DOES NOT SUPPORT OVERRULING *ENGEL*, *SCHEMPP*, AND *LEMON* SO AS TO VALIDATE RELIGIOUS WORSHIP AT PUBLIC SCHOOL EVENTS.

The government in its *amicus* brief suggests that the *Lemon* test and the results of the decision below are not consistent with the original intent of the Framers of the First Amendment. Brief of United States at 7-21, 26. Professor William P. Marshall, however, has underscored the difficulty of attempting to ascertain and utilize an original intent view to scuttle approximately 30 years of judicial precedent:

> Professor Harry Jones has argued that, in the interpretation of documents, constitutions, or statutes, the focus of professional and judicial attention shifts from the text of the materials to judicial precedent as the text gets older and interpretative materials accumulate. In cases that require textual interpretation, then, the grounds of decisions are derived not from text or history but from preexisting judicial interpretation.
>
> Professors Kurland and Laycock argue, in my opinion correctly, that reliance on historic intent at best

> is not a definitive guide to resolving issues under the religion clauses and at worse is simply a false god being used in some quarters to justify personal political agendas. . . .

W. Marshall, *Unprecedential Analysis and Original Intent*, 27 Wm. & Mary L. Rev. 925 (1987).

Professor Laycock demonstrates the difficulty that the "original intent" proponents have in attempting to argue that the no-establishment proscription of the First Amendment does not prevent non-preferential aid to religion. He conclusively demonstrates, by tracing the rejected drafts of the Establishment Clause, that "[t]he establishment clause actually adopted is one of the broadest versions considered by either House. It forbids not only establishments, but also any law respecting or relating to an establishment. Most important, it forbids any law respecting an establishment of 'religion.' It does not say 'a religion,' a national religion,' 'one sect or society,' or 'any particular denomination of religion.' It is religion generically that may not be established." Laycock, *"Nonpreferential" Aid to Religion: A False Claim About Original Intent*, 27 Wm. & Mary L. Rev. 875, 881 (1987). We believe he rightly concludes that "[i]f Congress paid any attention at all to the language it fought over, it rejected the 'no preference' view." *Id.* at 882.[8]

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[8] Professor Laycock's view is supported by other recognized authorities who demonstrate that the offered and rejected drafts of the Establishment Clause, as well as the debates, require a broad reading of the Establishment Clause and a rejection of the nonpreferential aid theory. *See* L. Levy, *The Establishment Clause* 75-89 (1986). Also helpful for an understanding of the original intent of the Framers is the record of the debate and the actual language of the various drafts of the Establishment Clause with a discussion on what conclusions may be properly drawn which appears in the classic work by A. Stokes, 1 *Church and State in the United States* 538-52 (1952). Stokes concluded from the language and debates that the First "Congress was not satisfied with a proposal which merely prevented an advantage to any one denomination over others as far as Church-State separation was concerned. It wished to go further." *Id.* at 546.

Professor Laycock argues that what the Framers may or may not have done is not as important as the principle they expounded. This was in part because the society in which they then lived "was so homogenous." *Id.* at 923. He notes that "[t]he United States today is more religiously diverse than anything the Framers could have imagined." *Id.* at 919.[9]

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[9] Professor Franklin Hamlin Littell has stated:

> Nevertheless, Americans are considerably less homogeneous than they were two hundred years ago. At the time of the Declaration of Independence, 85 percent of the population came from the British Isles. There were then, in a population of ca. 3.8 millions with Protestant state churches in the colonies organized on the European model, ca. twenty thousand Catholics and ca. 4,000 Jews. At the Bicentennial of the republic the American religious configuration is decidedly different. Ethnic, cultural, and religious pluralism is the rule.
>
> The largest denomination is the Roman Catholic Church with 52.8 millions. The estimate for the Jewish community is 5.9 millions. The Protestants are grouped as follows:
>
> MAJOR CONSERVATIVE DENOMINATIONS
>
> Lutherans, Missouri Synod—2.6 millions
> Southern Baptists—14.6 millions
> Mormons (LDS)—3.4 millions
> Christian Churches and Churches of Christ—1.0 millions
> Assemblies of God—2.1 millions
>
> MAJOR LIBERAL AND ECUMENICAL DENOMINATIONS
>
> American Baptists—1.6 millions
> Evangelical Lutherans (ALC, ELC, & ELC Assoc.)—5.3 millions
> Christian Church (Disciples)—1.1 millions
> Episcopalians—2.5 millions
> UCC (Congregationalists and E & R)—1.7 millions
> Presbyterians—3.0 millions
> Methodists (UMC)—9.2 millions
>
> In addition, there are black churches for which reliable estimates are not available: National Baptist Convention of America (2.7 million), National Baptist Convention, Inc. (5.5 million), African Methodist Episcopal Church (1.1 million),

In *Schempp*, the Court, quoting Justice Jackson's dissent in *Everson v. Board of Educ.*, 330 U.S. 1 (1947), stated:

> "There is no answer to the proposition . . . that the effect of the religious freedom Amendment to our Constitution was to take every form or propagation of religion out of the realm of things which could directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers' expense. . . . This freedom was first in the Bill of Rights because it was first in the forefathers' minds; it was set forth in absolute terms, and its strength is its rigidity."

Schempp, 374 U.S. at 216. Significantly in *Schempp*, this Court clearly understood that the principles advanced by the government today were contrary even then to established judicial precedent:

> The wholesome "neutrality" of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one *or of all orthodoxies*. This the Establishment Clause prohibits. And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. This

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and African Methodist Episcopal Zion Church (940,000). Perhaps more to the point in terms of America's religious pluralism one needs to be reminded that there are in the United States an estimated 1.8 million Muslims, 800,000 Black Muslims, 500,000 Hindus,—and one state with a Buddhist plurality (Hawaii).

F. Littell, *Religious Freedom in Contemporary America*, 31 J. Church & St. 219-20 (Spring 1989).

> the Free Exercise Clause guarantees. Thus, as we have seen, the two clauses may overlap. As we have indicated, the Establishment Clause has been directly considered by this Court eight times in the past score of years and, with only one Justice dissenting on the point, it has consistently held that the clause withdrew all legislative power respecting religious belief or the expression thereof. The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that *to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.* The Free Exercise Clause, likewise considered many times here, withdraws from legislative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasion thereof by civil authority. Hence it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion. *The distinction between the two clauses is apparent—a violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended.*

Id. at 222-23 (emphasis supplied).

IV. THE "EFFECTS TEST" OF *LEMON* WAS DERIVED ORIGINALLY NOT FROM A PAROCHIAL SCHOOL AID CASE AS CLAIMED BUT FROM PUBLIC SCHOOL RELIGIOUS WORSHIP CASES.

It is worth underscoring that the first two prongs of the *Lemon* test were first announced in *Schempp* in the context of religious exercises conducted in public schools, not aid to parochial schools. After announcing a two-prong test, the Court in *Schempp* then found that the religious exercises were unconstitutional:

> The conclusion follows that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights of the appellees and petitioners. Nor are these required exercises mitigated by the fact that individual students may absent themselves upon a parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause. . . . Further, it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, "it is proper to take alarm at the first experiment on our liberties."

Id. at 224-25 (citation omitted).

V. THE APPROPRIATE CONSTITUTIONAL REVIEW IN THIS TYPE OF CASE REQUIRES THE UTILIZATION OF THE ANALYSIS OF THIS COURT IN *SCHEMPP* AND *LEMON* AS HONED THROUGH JUDICIAL APPLICATION RESULTING IN THE ENDORSEMENT INQUIRY.

Amici believe that any missing link in the appropriate analysis of cases wherein public school students are subject to officially conducted worship, whether that be within the classroom or at a graduation ceremony, has been supplied by Justice O'Connor in her refinement of the *Lemon* test. In *County of Allegheny v. American Civil Liberties Union*, 109 S. Ct. 3086 (1989), the majority of this Court embraced Justice O'Connor's endorsement analysis. The majority stated that "[i]n recent years, we have paid particularly close attention to whether the challenged governmental practice either has the purpose or effect of 'endorsing' religion, a concern that has long had a place in our Establishment Clause jurisprudence." *Id.* at 3100, citing *Engel v. Vitale*, 370 U.S. 421, 436 (1962), and *Wallace v. Jaffree*, 472 U.S. 38, 60 (1985).

In *County of Allegheny v. American Civil Liberties Union*, Justice O'Connor clearly articulated her endorsement analysis. She explained that she joined the majority in *Lynch v. Donnelly*, 465 U.S. 668 (1984), on the strength of *Marsh v. Chambers*, 463 U.S. 783 (1983), as an acknowledgement of religion in American life. She, however, carefully explained that such government acknowledgements of religion were not understood as conveying an endorsement of a particular religious belief. However, she said, at the same time, "it is clear that '[g]overnment practices that purport to celebrate or acknowledge events with religious significance must be subjected to careful judicial scrutiny.' " *County of Allegheny*, 109 S. Ct. at 3118, citing *Lynch v. Donnelly*, 465 U.S. at 694.

Justice O'Connor, further explained her endorsement analysis:

> As a theoretical matter, the endorsement test captures the essential command of the Establishment Clause, namely, that government must not make a person's religious beliefs relevant to their standing in the political community by conveying a message "that religion or a particular religious belief is favored or preferred."

Id. at 3119, citing *Wallace v. Jaffree*, 472 U.S. 38, 70 (1985). Sensitive to the fact that our nation has developed from a highly homogeneous to a pluralistic society, Justice O'Connor continued:

> We live in a pluralistic society. Our citizens come from diverse religious traditions or adhere to no particular religious beliefs at all. If government is to be neutral in matters of religion, rather than showing either favoritism or disapproval towards citizens based on their personal religious choices, government cannot endorse the religious practices and beliefs of some citizens without sending a clear message to nonadherents that are outsiders or less than full members of the political community.

Id.

In a succinct statement that appears to directly reject the arguments of the government and the petitioners in this case that coercion is the central focus of concern in non-financial aid cases, Justice O'Connor stated:

> An Establishment Clause standard that prohibits only "coercive" practices or overt efforts at government proselytization . . . but fails to take account of the numerous more subtle ways that government can show favoritism to particular beliefs or convey a message of disapproval to others, would not, in my view, adequately protect the religious liberty or respect the religious diversity of the members of our pluralistic political community. Thus, this Court has never relied on coercion alone as the touchstone of Establishment Clause analysis.

Id. Justice O'Connor concluded that "any Establishment Clause test limited to '*direct* coercion' clearly would fail to account for forms of '[s]ymbolic recognition or accommodation of religious faith' that may violate the Establishment Clause." *Id.* at 3120.

VI. THE TEST SUGGESTED BY THE GOVERNMENT IS NEITHER HELPFUL NOR CONSISTENT WITH THE PRINCIPLE OF INDIVIDUAL RELIGIOUS FREEDOM EMBRACED IN THE RELIGION CLAUSES.

Amici agree with Justice O'Connor that if any modification is required of the *Lemon* test, it will not be accomplished through the government's coercion analysis but rather through the endorsement test which, as stated by Justice O'Connor, "is capable of consistent application." *Id.*[10]

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[10] Dean Joseph Richard Hurt argues that the endorsement approach "better captures the essence of establishment Clause designs than prior articulations put forth by members of the Court and legal scholars." J. Hurt, *The Use of Endorsement for Establishment Clause Analysis—The Key to a New Consensus*, 8 Miss. C. L. Rev. 1, 30 (Fall 1987). He further contends that "[i]ts sweep, therefore, is sufficiently broad to protect the major values upon which the Court has been able to agree." *Id.*

It is clear that even the Solicitor General's suggested test falls far short of any appropriate or helpful analysis of Establishment Clause jurisprudence.[11] The erection of a large Latin cross, a Menorah, or a symbol of an Eastern religion at a graduation exercise could not be claimed to be specifically coercive, yet it certainly would violate the Establishment Clause as understood by most of the people of this country. Justice Kennedy, for instance, seems to acknowledge that at some point symbolic official recognition of religion generally or sectarian worship specifically may violate the Establishment Clause without coercion. According to Justice Kennedy, the Establishment Clause would forbid the city to permit the permanent erection of a large Latin cross on the roof of city hall. *Id.* at 3137. Justice Kennedy further acknowledges an eager proselytizer may use religious symbols for his own ends. *Id.* at 3146.[12] He also correctly states that "[t]he ability of the organized community to recognize and accommodate religion in a society with a pervasive public sector requires diligent observance of the border between accommodation and establishment." *Id.* at 3136.

Amici believe that the government's attempt to validate religious exercises as part of the graduation exercises of junior high school students completing their required class time in a public school crosses the constitutional borderline of the proscriptions of the Establishment Clause and the values it seeks to protect. We further believe that *Engel*, *Schempp*, and Justice O'Connor's endorsement analysis, all

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[11] Professor Carl H. Esbeck has pointed out that "[r]educing the establishment clause to the prevention of *coercion* of religiously based conscience renders the clause's reach coextensive with that of the free exercise clause," and therefore makes it redundant. C. Esbeck, *The Lemon Test: Should It be Retained, Reformulated or Rejected?*, 4 Notre Dame L. J. 513, 544 (1990).

[12] Under Justice Kennedy's suggested analysis, would the repeated use of the same clergy of the dominant faith within a community praying sectarian prayers or urging the students to give their hearts to Jesus Christ or the celebration of the Mass, be construed as unconstitutional?

of which are soundly grounded in judicial precedent, require that this Court sustain the decisions of the courts below.

VII. CALLING THE SCHOOL SPONSORED ACTIVITY "CEREMONIAL" DOES NOT ALTER THE CONSTITUTIONAL INQUIRY.

Petitioners and the government seek to escape the holdings of this Court as to religious exercises involving public school students by seizing upon the term "ceremonial." The logic of that argument has been exploded by Professor Richard H. Jones who explained:

> Labeling some activity "merely ceremonial" or "commonplace ritual" does not dispose of the issue of whether the activity is religious. Courts do not appear to understand why these practices are so commonplace. Ritual is not unimportant because it is only part of the introduction and conclusion of a special occasion rather than part of the business of that occasion. Ritual cannot be dismissed as merely solemnizing a secular occasion—one religious objective of ritual is the symbolic marking of the transition to and from special occasions. High school graduation, which marks a transition in the life of the student to adulthood, is an example of an occasion in the life of a community in which prayers and other ritualized formalities are expected. However, courts have upheld invocation of God and public school graduation ceremonies without discussing the importance of ritual in human lives and ignoring the religious nature of rituals.

R. Jones, *"In God We Trust" and the Establishment Clause*, 31 J. Church & St. 381, 390-91 (Autumn 1989). Professor Jones argues that "the issue is whether the symbolic invocations of God in governmental actions are religious in nature, not whether they are 'cultural' or 'ceremonial.' And since they do relate directly to our fundamental transcendental values and beliefs the conclusions must be that they are indeed religious." *Id.* at 391.

VIII. CLAIMING THAT THE WORSHIP PART OF A PUBLIC SCHOOL EVENT IS MERELY AN "ACCOMMODATION" OF RELIGION DISTORTS ITS ACCEPTED CONSTITUTIONAL MEANING AND REPRESENTS A VIOLATION OF RELIGIOUS LIBERTY PRINCIPLES.

Professor Jones, echoing the concept expressed in Justice O'Connor's endorsement test, also demonstrates that religious exercises are not a neutral "accommodation" of religion in the public sphere as argued by petitioners and the government:[13]

> They involve reference to a particular type of religion—theism. This is neutral to Christianity, Judaism, and other theistic traditions, but not to all religious traditions. The effect on non-theistic minorities who take religion seriously must be to create a feeling of an inferior status: "Only those whose beliefs are singled out for recognition will think that public sphere accommodations promote conscientious autonomy and free exercise values; others will instead be given the impression that nonadherence to the preferred creed means being less than a full member of the political community."

Id. at 398-99.

Equally offensive is the impact that a secularized religion can have on those who may not be a part of a minority religious group. Professor Jones further argues:

> In the words of Justice Brennan, "Religion is too personal, too sacred, too holy, to permit its 'unhallowed perversion' by a civil magistrate." Employing religion as an "engine of civil policy" is, as James

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[13] Justice O'Connor has stated that "the endorsement standards recognizes that the religious liberty so precious to the citizens who make up our diverse country is protected, not impeded, when government avoids endorsing religion or favoring particular beliefs over others." *County of Allegheny v. American Civil Liberties Union*, 109 S. Ct. at 3121. She is correct in her observation that "the government can *acknowledge* the role of religion in our society in numerous ways that do not amount to an endorsement." *Id.*

> Madison said, an "unhallowed perversion of the means of salvation." Any use of the symbol "God" in civil functions may appear to be a "trivialization and degradation" of a sacred symbol. Secular uses of religious symbols (e.g., promoting patriotism) would be especially objectionable. From this perspective, the only legitimate objective of the God-references is to voice in the public sphere Americans' religious faith.

Id. at 415.

Of course, all religious groups and individuals themselves have the prerogative to utilize the public market place to proselytize and to otherwise celebrate their religious heritage so long as it does not carry the imprimatur of the state.

IX. THE CORE PURPOSE OF THE BILL OF RIGHTS, INCLUDING FIRST AMENDMENT PROSCRIPTIONS, WAS TO PROTECT THE INDIVIDUAL FROM THE TYRANNY OF THE MAJORITY AND TO EXTEND PERSONAL FREEDOM.

The Constitution was cautiously designed with built-in checks and balances to prevent the control of government from being placed in the hands of an elected monarch or an imperial president. But this safeguard was not enough. The founders of our country were no more willing to permit religious liberty and other basic rights to remain within the ultimate control of the ballot box or governmental functionaries than they were to let these vital matters touching personal conscience to depend upon a succession of monarchs. They insisted that fundamental personal rights be specifically protected by a Bill of Rights. As the Supreme Court stated in *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 638 (1943):

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts.

In a letter to James Madison on October 17, 1788, Thomas Jefferson objected to Madison's opinion that a Bill of Rights would be ineffective. Jefferson suggested that Madison omitted to mention "one [argument] which has great weight . . . , the legal check which [a Bill of Rights] puts in the hands of the judiciary." In a December 20, 1789, letter to Madison, Jefferson wrote: "I will now add what I do not like. First, the omission of a bill of Rights providing clearly and without aid of sophisms for religious freedom . . . ." 12 *The Papers of Thomas Jefferson* 438-42 (J. P. Boyd ed. 1958). Jefferson's letters, no doubt, led Madison to emphasize when he presented his draft of the Bill of the Rights to Congress that the courts would enforce the limitations of the proposed amendments. B. Schwartz, 1 *The Bill of Rights: A Documentary History* 593 (1971).[14]

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[14] *Amici* notes that the Chief Justice, dissenting in *Wallace v. Jaffree*, 472 U.S. 38, 92-104 (1985), minimized Jefferson's input concerning the principles embodied in the First Amendment. It has been claimed, however, by one commentator:

> Rehnquist's performance here [his dissent in *Wallace v. Jaffree*] left much to be desired. Inconsistently, he attempted to discredit Jefferson as an authority on the meaning of the First Amendment but later nullified that effort by citing two of Jefferson's actions that seemed useful for his own interpretation. In doing the latter he ignored (and as a supreme court justice was in no position to share) Jefferson's complex theory of how the three independent but coordinate branches of the federal government were to determine constitutionality. Nor did Rehnquist point out that his quotation from the Kaskaskai treaty was really an independent nation's stipulation of the use to be made on its own land of its compensation, or that the trust endowment was congressional confirmation of a commitment made before the inauguration of the Constitution. Rehnquist compounded the inconsistency further by citing false history, for, contrary to his contention, Jefferson actually was in the United States throughout the ratification process: his boat sighted land on 13 November 1789, a week before the first state, New Jersey, voted to ratify the Bill of Rights on 20 November. Nor was Rehnquist right to dismiss the Danbury Baptist letter as "a short note of courtesy," for

As professor Douglas Laycock has stated:

> When he introduced the Bill of Rights, Madison explained that even limited powers could be abused, that Congress had discretion as to means, and that a bill of rights could protect against abusive measures that might otherwise be necessary and proper means of implementing delegated powers.

D. Laycock, *"Nonpreferential" Aid to Religion: A False Claim About Original Intent*, 27 Wm. & Mary L. Rev. 875, 907 (1987).[15]

Professor Philip Kurland, in describing the Bill of Rights, commented:

> The Bill of Rights was largely a series of restraints against majority imposition on minorities, written mostly in terms of assuring procedures that would guarantee the rule of law, that the arbitrary whims of officials would not be invoked. The concern of the Bill of Rights was freedom of individuals. . . .

P. Kurland, *The Religion Clauses and the Burger Court*, 34 Cath. U. L. Rev. 1, 5 (Fall 1984). Thus, as Professor

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(as the opening paragraph of this article demonstrates) Jefferson deliberately used the letter to inculcate a political lesson condemning "the alliance of Church and State."

Healey, *Thomas Jefferson's "Wall": Absolute or Serpentine?*, 30 J. Church & St. 441, 459 (Autumn 1988).

[15] Professor Alexander Meiklejohn stated that the First Amendment represents our forefathers' victory for "the unlimited right of 'Religious and Political Freedom.'" A. Meiklejohn, *What Does the First Amendment Mean?*, 20 U. Chi. L. Rev. 461, 464 (1953). Contrary to the current philosophy urged upon this Court, "[u]nder the new Constitution, the people, now a corporate body of self-governing citizens, forbade their legislative agents to use, for the protection of the nation, any limitation of the religious or political freedom of the people from whom their legislative authority was derived." *Id.* Meiklejohn argues from Madison's and Hamilton's writings in the "Federalist" that "the citizens, as the sovereign power, must be kept free from any dependence on their representatives." *Id.* at 469. He argues that "it is the legislature which, in actual fact, chiefly threatens to usurp the authority of the people." *Id.* at 469-70.

Norman Dorsen observed, "it is the federal judiciary's special province, relatively insulated as it is from majoritarian political control . . . to protect those who adhere to minority religions or who do not profess a religion." N. Dorsen, *The Religion Clauses and Nonbelievers*, 27 Wm. & Mary L. Rev. 863, 869 (1987).

Accordingly, although the government of the United States under its new Constitution was to be governed by a representative government generally exercising authority by majoritarian rule, the Bill of Rights was an anti-majoritarian instrument designed to protect the individual from the tyranny of the majority and their elected executive and legislative representatives. But the Bill of Rights and its First Amendment also contained other important philosophical ingredients. As Professor Roger Finke observed, the First Amendment symbolized the dramatic shift from religious establishment to religious freedom. Finke, *Religious Deregulation: Origins and Consequences*, 32 J. Church & St. 609 (Summer 1990). Professor Finke observed that the First Amendment severed the close ties between church and state in the United States. He argued too that the no-Establishment Clause of the First Amendment eliminated the concept of religious toleration and redefined the boundaries within which religion operated:

> The new boundaries supported a religious market where competition was not only endured, it was encouraged. With the new rules of law, upstart sects and new religions were not only given a right to exist (toleration), they were given "equal" rights; and the once privileged religious establishments lost the legislative and financial support of the state. By denying the establishment of any religion, and granting the free exercise of religion to all, the state could no longer support regulation that denied privileges to or imposed sanctions on specific religious organizations—or their members. The state was denied the privilege, and freed of the obligation, of regulating religion. The result was an unregulated religious economy.

These drastic changes in the support and regulation of religion led to many dire forecasts on the future of the church. By the early nineteenth century, however, it became evident that the local church had not only survived this decline in regulation, it has prospered. But why? What were the consequences of deregulating religion and why did religion prosper with less support from the state?

The thesis of this essay is that religious deregulation has had powerful effects on the religion of the people, their churches, and the very operation of the religious market since the eighteenth century. Indeed, religious deregulation helps to explain the rapid growth of populist religions in the early nineteenth century as well as features attributed to modern religious culture. Contemporary issues such as religious individualism, pluralism, and the marketing of religion, can be understood as natural consequences of religious deregulation. . . .

Id. at 609-10.

Professor Finke claimed, however, that the First Amendment was designed to sever the ties between church and state:

> As geographic size, economic interests, and increasing religious diversity pushed the colonies toward an increased acceptance of religious toleration, an unlikely alliance between the rationalists and the evangelicals pulled the colonies toward complete religious freedom. Despite the disparity in the background and training of the rationalists and evangelicals, their arguments for religious liberties could sound remarkably similar. . . . The alliance between the rationalists and evangelicals was tenuous, but both groups could agree on the essential points: citizenship should not determine church membership and the ties between church and state should be severed.

Id. at 612-13.

Professor Finke argued that at the adoption of the First Amendment "[d]e facto establishments still existed, and many states still refused to give religious liberties to Roman Catholics, Jews, and 'infidels,' but the regulation of religion was in sharp decline. The religious market was increasingly becoming an unregulated market, a market that would have powerful consequences on the organization and practice of religion in America." *Id.* at 613.

In essence, petitioners here and a number of *amici* supporting the position of petitioners apparently long to return to a less pluralistic and less deregulated religious society. They seek to return to the "good ole days" by a narrow construction of the Establishment Clause.

The thread that runs through the brief of the petitioner and most of the briefs of the supporting *amici* give comfort to those who practice religion in a way consistent with the views of the majority, at least the political majority within a given community. In truth, the religious liberty claim asserted by petitioners and supporting *amici* may be correctly described as community-by-community "religious toleration" and smacks of the worst, not the best, of our heritage.

X. THROUGHOUT THE HISTORY OF OUR NATION THERE HAS BEEN A FORCE TO IMPRESS THE IMPRIMATUR OF THE STATE ON THE RELIGIOUS VIEWS OF THE MAJORITY AT THE EXPENSE OF THE INDIVIDUAL.

The attempt of some to use governmental means to accomplish religious and sectarian ends has been a force in this nation from its beginning. It is no surprise that it continues to surface from time-to-time, as it has at this very time. Professor Carol Weisbrod, in describing this phenomena, stated:

> Historian Morton Borden has recently noted that many early federalists "envisioned the American future as a federation of Christian States in which the majority churches would be supported by local compulsory taxation, and the state governments—where

real power would reside—would be controlled by Protestants only.

See Weisbrod, *On Evidences and Intentions: "The More Proof, The More Doubt,"* 18 Conn. L. Rev. 803, 820 (Summer 1986). Professor Weisbrod also noted that "some nineteenth century figures who are considered experts in relation to the religion clauses of the federal Constitution," also, contrary to Jefferson's view, continued to argue that a "Christian commonwealth" had been formed at the adoption of our Constitution. *Id.* at 821. She stated:

> Justice Joseph Story declared that the nation was Christian in the sense that the truth of Christianity was admitted. When he construed the federal Constitution, Story based his view on the assumption that the essential state policy was support for general Christianity. . . . In Story's view, "[t]he real object of the [first] amendment was not to countenance, much less to advance, Mahometanism, or Judaism, or infidelity, by prostrating Christianity; but to exclude all rivalry among Christian sects, and to prevent any national ecclesiastical establishment which should give to a hierarchy the exclusive patronage of the national government.

Id. at 822. Justice Story's view apparently is reflected in the dissent of the Chief Justice in *Wallace v. Jaffree*, 472 U.S. at 104. Thus, the endless struggle between Jefferson's and Madison's views of religious freedom and Story's Christian nation concept continues.

XI. TODAY THE RIGHT OF THE INDIVIDUAL IN MATTERS OF RELIGION IS AGAIN THREATENED BY THIS ATTEMPT TO NARROWLY CONSTRUE THE PROTECTIONS PROVIDED BY THE RELIGION CLAUSES.

Even Professor Michael W. McConnell, who advances the coercion test and is liberally cited by petitioners and the various *amici* filing in support of the petitioners, takes issue with the construction of the Establishment Clause as argued in the *Jaffree* dissent. He states:

> According to Justice Rehnquist, the establishment clause "forbade establishment of a national religion, and forbade preference among religious sects or denominations"—nothing more. Despite having quoted Madison's words, Justice Rehnquist failed to mention that under the first amendment, Congress cannot "compel men to worship God in any manner contrary to their conscience" or compel them to "conform" to any religion not of their own choosing.

M. McConnell, *Coercion: The Lost Element of Establishment*, 27 Wm. & Mary L. Rev. 933, 936 (1987).

One has a difficult time squaring the enlightened concepts embraced in the Bill of Rights with a narrow reading of the Religion Clauses of the First Amendment. A reading of the *amicus* brief filed by the United States clearly reveals that when the government suggests abandoning the *Lemon* test and utilizing a "liberty-focused inquiry," it really means liberty for the majority religious view within a community.

XII. THE CRABBED VIEW OF THE ESTABLISHMENT CLAUSE ADVANCED BY PETITIONERS AND THE GOVERNMENT DISTORTS THE ROLES OF THE CHURCH AND THE STATE AS TO THEIR RESPECTIVE INVOLVEMENT IN PUBLIC LIFE AND IMPACTS ON THE INDIVIDUAL.

Contrary to the suggestions of petitioners, this Court has not been insensitive to the religious interests of the community. In *Abington School District v. Schempp*, 374 U.S. 203, 226 (1963), this Court stated:

> The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard.

Justice Brennan, in his concurring opinion in *Schempp*, however, carefully platted the judicial boundary applicable to this case:

> Attendance at the public schools has never been compulsory; parents remain morally and constitutionally free to choose the academic environment in which they wish their children to be educated. The relationship of the Establishment Clause of the First Amendment to the public school system is preeminently that of preserving such a choice to the individual parent, rather than vesting it in the majority of voters to each State or school district. . . . In my judgment the First Amendment forbids the State to inhibit that freedom of choice by diminishing the attractiveness of either alternative—either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardizing the freedom of the public schools from private or sectarian pressures. The choice between these very different forms of education is one—very much like the choice of whether or not to worship—which our Constitution leaves to the individual parent. It is no proper function of the state or local government to influence or restrict that election.

Id. at 242.

If one accepts Justice Brennan's concept that the state may not limit the liberty of the private school and the carrying out of its role as it attempts to inculcate religious and other values, then conversely public education must be equally free from sectarian pressures.[16]

The point which has been missed by the petitioners and all the *amici* filing in their support is that we are not talking merely of speech. We are speaking of worship—perhaps one of the most sacred of all religious events—

[16] Justice O'Connor argues that "[j]ust as government may not favor particular religious beliefs over others, 'government may not favor religious belief over disbelief.'" *County of Allegheny v. American Civil Liberties Union*, 109 S. Ct. at 3123.

people directly calling upon God. It is ironic that today petitioners and those supporting them should not understand the distinction between a speech given at a graduation exercise of a junior high school and an act of religious worship whether it be conducted in a classroom, an auditorium at graduation, or a church or synagogue.[17]

Amici contend that with the new high in religious pluralism, the concept of religious liberty should not be turned on its head by embracing a distorted view of religious liberty advanced by petitioners and the government. Justice O'Connor has clearly and correctly articulated the true spirit of the non-establishment proscription of the First Amendment when she stated:

> The Establishment Clause prohibits government from making adherence to a religion relevant in any way to a person's standing in the political community. Government can run afoul of that prohibition in two principal ways: One is excessive entanglement with religious institutions, which may interfere with the independence of the institutions, give the institutions access to government or governmental powers not fully shared by nonadherents of the religion, and foster the creation of political constituencies defined along religious lines. . . . The second and more direct

[17] Justice White, in his dissent in *Widmar v. Vincent*, 454 U.S. 263, 284 (1981), argues against the view that religious worship is no different from any other variety of protected speech. He logically asserts that if this were so "the Religion Clauses would be emptied of any independent meaning in circumstances in which religious practice took the form of speech." Justice White further explained that "[t]alk about religion and about religious beliefs . . . is not the same as religious services of worship." *Id.* at 284 n.2.

Similarly, Justice O'Connor, writing for this Court in *Board of Educ. of Westside Community Schools v. Mergens*, 110 S. Ct. 2356, 2372 (1990), stated that "there is a crucial difference between *government* speech endorsing religion, which the Establishment Clause forbids, and *private* speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." A school graduation will certainly be viewed as a governmentally sponsored event with those invited to be there at the invitation of the public school system.

> infringement is government endorsement or disapproval of religion. *Endorsement sends a message to nonadherents that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders,* favored members of the political community. Disapproval sends the opposite message.

Lynch v. Donnelly, 465 U.S. at 687-88 (O'Connor, J., concurring) (emphasis supplied) (citations omitted).

XIII. PETITIONERS AND THE GOVERNMENT WOULD HAVE THIS COURT ABANDON DECADES OF JUDICIAL PRECEDENT AND REPLACE IT WITH A NEW RESTRICTIVE AND UNTRIED TEST TO APPLY TO ASSERTED VIOLATIONS OF THE NON-ESTABLISHMENT PROVISION OF THE FIRST AMENDMENT.

Petitioners and the government do not seek merely to have this Court interpret the facts and apply established constitutional principles. Rather, they make a frontal assault upon accepted judicial precedent established painstakingly by this and other courts over decades.[18] The havoc they seek to work can only result in chaos in Establishment Clause jurisprudence.

Professor William Marshall persuasively argues:

> Nevertheless, before overruling an entire jurisprudence wholesale, it is advisable to inquire into both the social effects inherent in such a displacement and the jurisprudential need for it. This inquiry, moreover, is particularly appropriate when the result of disavowing the former jurisprudence would be as radical as the result advocated by those who suggest a constitutional analysis based on so-called "original intent." Indeed,

[18] The importance of *stare decisis*, even in constitutional cases, was noted by Chief Justice Rehnquist in *Welch v. Texas Dept. of Highways and Public Transp.*, 483 U.S. 468 (1987), in which he commented that by "circumspect observance" of the principle of *stare decisis* "the wisdom of this Court as an institution transcending the moment can alone be brought to bear on the difficult problems that confront us." *Id.* at 479.

> a review of constitutional law suggests that overruling an entire jurisprudence on the grounds proposed by the Justice Department would be unparalleled in its extremism. . . .

Marshall, *Unprecedential Analysis and Original Intent*, 27 Wm. & Mary L. Rev. at 926. Professor Marshall also claims that "the megaton explosion . . . that did envelope *Lynch v. Donnelly* would be a hush compared to the conflagration that would occur if the Court constructed an entirely new direction based on one advocate's highly debatable claim of history 'properly understood.' " *Id.* at 927.

The government admits that the appropriate analysis of the non-establishment proscriptions of the First Amendment should be "limned through case-by-case adjudication." Brief of the United States at 24. Yet, this is exactly what this Court and others have been doing for over three decades.[19] Attached as Appendix A to this brief is a comprehensive listing of hundreds of federal and state court decisions applying the *Lemon* test in Establishment Clause cases. Included also in Appendix B are the cases applying Justice O'Connor's helpful endorsement analysis.

The revisiting of all the issues addressed in these cases with a new test will add a tremendous burden to an already overburdened judicial system. More importantly it will jettison the judicial precedent in this whole area and make it difficult, if not impossible, to advise citizens, churches, governmental agencies, and others on how to

[19] Justice White sagely acknowledges that "Establishment Clause cases are not easy; they stir deep feeling; and we are divided among ourselves, perhaps reflecting the different views of the people of this country. What is certain is that our decisions have tended to avoid categorical imperatives and absolutists approaches at either end of the range of possible outcomes." *Committee for Public Educ. & Religious Liberty v. Regan*, 444 U.S. 646, 662 (1980). The Chief Justice has stated "that the Establishment Clause presents especially difficult questions of interpretation and application." *Mueller v. Allen*, 463 U.S. 388, 392 (1983). What petitioners and the government seek is the rejection of the principle of *stare decisis* and the utilization of an absolutist approach to the expense of personal religious freedom.

react when Establishment Clause questions arise. In addition, the *Lemon* test as it has evolved over years of case-by-case application to specific facts and programs has not resulted in a predetermined conclusion to strike down governmental acts. Finally, the result with a new and greater unpredictability in the area of church-state relations can only cause greater discord and divisiveness along religious lines.

Perhaps even more problematic than ignoring judicial precedent and creating an area of constitutional uncertainty, we are told by the Solicitor General that the test advanced by him as the substitute for *Lemon* and as modified by the endorsement analysis will not "necessarily make the requisite inquiry less difficult." Brief of United States in Support of Pet. for Cert. at 18.[20]

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the First Circuit should be sustained.

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[20] Professor Esbeck argues for the retention of the *Lemon* test because, to adopt the suggested alternatives "would work a sea of change in current legal doctrine" and would leave the future as a question mark. Esbeck, *supra*, at 548.

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APPENDIX

APPENDIX A

ESTABLISHMENT CLAUSE CASES USING THE LEMON TEST

This appendix lists cases located by Westlaw searches (Allfeds and Allstate: Lemon /p test** testing /p establish! /p first-amendment (secular /5 legislative /5 purpose) (primary /5 effect) inhibi! religiou!) in April and July and that were in print as of July 1, 1991.

Supreme Court Cases

CASE	CITATIONS	CHALLENGED MATTER	VIOLATIVE OF ESTABLISHMENT CLAUSE
Board of Education of Westside Community v. Mergens	495 U.S. __, 110 S. Ct. 2356, 110 L.Ed.2d 191 (1990)	Equal Access to Student Christian club under Equal Access Act	No
Jimmy Swaggart Ministries v. Board of Equalization	493 U.S. __, 110 S. Ct 688, 107 L.Ed.2d 796 (1990)	Religious organization seeking refund of sales and use taxes paid under protest	No
Texas Monthly, Inc. v. Bullock	489 U.S. 1, 109 S. Ct. 890, 103 L.Ed.2d 1 (1989)	Sales tax exemption provided by state statute for religious periodicals	Yes
Bowen v. Kendrick	487 U.S. 589, 108 S. Ct. 1, 101 L.Ed.2d 520 (1988)	Adolescent Family Act (remanded to determine if violative as applied)	No

Karcher v. May	484 U.S. 72, 108 S. Ct. 388, 98 L.Ed.2d 327 (1987)	State statute which provided for 1 minute of silence at beginning of school day	Moot
Corporation of Presiding Bishop v. Amos	483 U.S. 327, 107 S. Ct. 2862, 97 L.Ed.2d 273 (1987)	Title VII as applied to religious discrimination in employment to nonprofit activities of religious organization	No
Edwards v. Aguillard	482 U.S. 578, 107 S. Ct. 2573, 96 L.Ed.2d 510 (1987)	Louisiana Balanced Treatment for Creation-Science and Evolution-Science in Public School Instruction Act	Yes
Witters v. Washington Department of Services for the Blind	474 U.S. 290, 106 S. Ct. 748, 88 L.Ed.2d 846 (1986)	Financial vocational assistance for blind student pursuing bible studies degree at Bible College	No

School District of City of Grand Rapids v. Ball	473 U.S. 373, 105 S. Ct. 3216, 87 L.Ed.2d 267 (1985)	Shared time and community education programs provided nonpublic school students at public expense in nonpublic schools	Yes
Aguilar v. Felton	473 U.S. 402, 105 S. Ct. 3232, 87 L.Ed.2d 290 (1985)	Use of public funds to finance programs sending public school teachers and other professionals to religious schools to provide remedial instruction	Yes
Estate of Thorton v. Caldor Inc.	472 U.S. 703, 105 S. Ct. 2914, 86 L.Ed.2d 557 (1985)	State statute which provides Sabbath observes with an absolute right not to work on their chosen Sabbath	Yes
Wallace v. Jaffree	472 U.S. 38, 105 S. Ct 2479, 86 L.Ed.2d 29 (1985)	State statute authorizing a daily period of silence in public schools for meditation or voluntary prayer	Yes

Tony & Susan Alamo Foundation v. Secretary of Labor	471 U.S. 290, 105 S. Ct. 1953, 85 L.Ed.2d 278 (1985)	Application of Fair Labor Act to non-profit religious organization	No
Lynch v. Donnelly	465 U.S. 668, 104 S. Ct 1355, 79 L.Ed.2d 604 (1984)	Nativity Scene included in Christmas display	No
Mueller v. Allen	463 U.S. 388, 103 S. Ct 3062, 77 L.Ed.2d 721 (1983)	Tax deduction for expenses incurred in sending children to parochial schools (i.e. tuition, textbooks, transportation)	No
Larkins v. Grendel's Den, Inc.	459 U.S. 116, 103 S. Ct. 505, 74 L.Ed.2d 297 (1982)	State statute which vests governing bodies of churches and schools with the power to veto applications for liquor licenses within 500 feet radius of school or church	Yes

Larson v. Valente	456 U.S. 228, 102 S. Ct. 1673, 72 L.Ed.2d 624 (1982)	State statute requiring registration and reporting requirements only upon religious organizations that solicit 50% funds from nonmembers	Yes (Though the Court stated it did not use the Lemon Test to arrive at its decision, the Court discussed each prong of the Lemon Test)
Stone v. Graham	449 U.S. 39, 101 S. Ct. 192, 66 L.Ed.2d 831 (1980)	State statute requiring posting of the Ten Commandments on walls of each public school classroom	Yes
Committee for Public Education and Religious Liberty v. Regan	444 U.S. 646, 100 S. Ct. 840, 63 L.Ed.2d 94 (1980)	Statute authorizing the use of public funds to reimburse church sponsored and secular non-public schools for performing various testing and reporting services mandated by the state.	No
NLRB v. Catholic Bishop of Chicago	440 U.S. 490, 99 S. Ct. 1313, 59 L.Ed.2d 533 (1979)	Jurisdiction of NLRB over lay faculty at catholic school	Yes

McDaniel v. Paty	435 U.S. 618, 98 S. Ct. 1322, 55 L.Ed.2d 593 (1978)	Disqualification of candidate for delegate to Tennessee constitutional convention because he was a minister	Yes
New York v. Cathedral Academy	434 U.S. 125, 98 S. Ct. 340, 54 L.Ed.2d 346 (1977)	State statute authorizing reimbursement to nonpublic schools for state mandated record keeping and testing programs	Yes
Wolman v. Walter	433 U.S. 229, 97 S. Ct. 2593, 53 L.Ed.2d 714 (1977)	Expenditures of public funds to provide aid to students of nonpublic elementary and secondary schools	
		1. For purchase of secular textbooks, standardized testing and scoring service	No
		2. For instructional materials and equipment and transportation for field trips	Yes

Roemer v. Board of Public Works	426 U.S. 736, 96 S. Ct. 2337, 49 L.Ed.2d 179 (1976)	Public aid in form of noncategorical grants to eligible colleges and universities	No (as long as nonsecular in use)
Meek v. Pittenger	421 U.S. 349, 95 S. Ct. 1753, 44 L.Ed.2d 217 (1975)	State statute providing for state expenditures in nonpublic schools.	
		1. Textbook loan program	No
		2. Instructional equipment, materials and auxiliary services	Yes
Committee for Public Education and Religious Liberty v. Nyquist	413 U.S. 756, 93 S. Ct. 2955, 37 L.Ed.2d 923 (1973)	Aid to nonpublic schools	Yes
Hunt v. McNair	413 U.S. 734, 93 S. Ct. 2868, 37 L.Ed.2d 923 (1973)	State statutory scheme for aiding colleges by issuing revenue bonds for projects (excluding facilities for sectarian study or religious worship)	No

Levitt v. Committee for Public Education and Religious Liberty	413 U.S. 472, 93 S. Ct. 2814, 37 L.Ed.2d 736 (1973)	State statute providing for the making of certain payments of public funds to nonpublic schools	Yes
Tilton v. Richardson	403 U.S. 672, 91 S. Ct. 2091 (1971)	Higher Education Facilities Act	No—except provision that limits recipients' obligation to refrain from using federally financed facilities for sectarian instruction or religious worship to 20 years

FEDERAL COURTS OF APPEALS

Goodall v. Stafford County School Board	930 F.2d 363 (4th Cir. 1991)	Public school board refused to provide deaf child with cued speech interpreter at private religious school	No
Cammack v. Waihee	932 F.2d 765 (9th Cir. 1991)	State statute declaring Good Friday a legal holiday	No

Scharon v. St. Luke's Episcopal Presbyterian Hospitals	929 F.2d 360 (8th Cir. 1991)	Applying Title VII and the Age Discrimination law in suit brought by priest against church affiliated hospital	Yes
Harris v. City of Zion	927 F.2d 1401 (7th Cir. 1991)	Elementary school directives: 1. Removal of religious books from class library 2. Prohibit teacher from reading bible during school hours and keeping bible on his desk 3. Removal of bible from school library	No No Yes
Salvation Army v. Department of Community Affairs	919 F.2d 1476 (3d Cir. 1990)	Exemption to state statute regulating boarding houses	Yes (Remanded)
South Ridge Baptist Church v. Industrial Commission of Ohio	911 F.2d 1203 (6th Cir. 1990)	Statute requiring church pay into worker's compensation fund for all employees except ministers	No

Intercommunity Center for Justice and Peace v. Immigration and Naturalization Service	910 F.2d 42 (2d Cir. 1990)	Immigration Reform and Control Act as applied to religious organizations whose members believe in employing needy	No
Weisman v. Lee	908 F.2d 1090 (1st Cir. 1990)	Inclusion of invocations and benedictions in form of prayer in promotion and graduation of city public schools.	Yes
Gregoire v. Centennial School District	907 F.2d 1366 (3d Cir. 1990)	Use of high school auditorium by religious organizations	No
Dole v. Shenandoah Baptist Church	899 F.2d 1389 (4th Cir. 1990)	Fair Labor Standards Act as applied to church operated schools and employees	No
ACLU v. Wilkinson	895 F.2d 1098 (6th Cir. 1990)	Construction and use of biblical age stable on public grounds of state capital building to be used as a stage	No as long as all groups allowed to use and city posts notice stating not supported by public funds or an endorsement of religion.

Smith v. County of Albemarle	895 F.2d 953 (4th Cir. 1990)	Erection of nativity scene on front lawn of county office building	Yes
NAACP v. Hunt	891 F.2d 1555 (11th Cir. 1990)	Flying of the Confederate flag over state capital	No
Clayton v. Place	884 F.2d 376 (8th Cir. 1989)	School district policy prohibiting dancing	No
Foremaster v. City of St. George	882 F.2d 1485 (10th Cir. 1989)	1. Construction of city logo depicting Mormon temple	Remanded to determine primary effect
		2. Free Electricity to temple by city utility	Yes
Mergens v. Board of Education of Westside	867 F.2d 1076 (8th Cir. 1989)	Equal Access Act as applied to the formation of Christian Bible Study Club at high school	No
Garnett v. Renton School District	874 F.2d 608 (9th Cir. 1989) *amending* 865 F.2d 1121 (9th Cir. 1989)	High school student religious groups to meet in classrooms prior to start of school	Yes

Mather v. Village of Mundelein	864 F.2d 1291 (7th Cir. 1989)	Erection of creche in front of village hall as part of larger secular display	No
Jager v. Douglas County School District	862 F.2d 824 (11th Cir. 1989)	Invocations prior to public high school football games	Yes
Carter v. Broadlawns Medical Center	857 F.2d 448 (8th Cir. 1988)	County hospital hired chaplain	No
Wilder v. Bernstein	848 F.2d 1338 (2d Cir. 1988)	State law that allows city to contract with private (religious) agencies to place children (policy one of 1st come-1st served with preference to religion if available and does not deprive others)	No
Forest Hills Early Learning Center, Inc. v. Grace Baptist Church	846 F.2d 260 (4th Cir. 1988)	State statute exempting church run child care centers from licensing requirements	No

ACLU v. Allegheny County	842 F.2d 655 (3d Cir. 1988)	Placement of creche inside main entrance of city courthouse and display of menorah on steps of city building	Yes
Van Zandt v. Thompson	839 F.2d 1215 (7th Cir. 1988)	State house resolution authorizing and making plans for the conversion of hearing room in state capital into prayer room	No
Cuesnongle v. Ramos	835 F.2d 1486 (1st Cir. 1987)	Ruling by Puerto Rico Department of Consumer Affairs requiring university to reimburse students for cancelled classes	No
International Association of Machinists and Aerospace Workers v. Boeing	833 F.2d 165 (9th Cir. 1987)	Religious accommodation provision of Title VII	No
Crowder v. Southern Baptist Convention	828 F.2d 718 (11th Cir. 1987)	Court resolution of Parliamentary ruling made at church convention	Yes

United Christian Scientists v. Christian Science Board of Directors	829 F.2d 1152 (D.C. Cir. 1987)	Private copyright law that grants Christian Science Board an extended copyright on all edition of Science & Health	Yes
Smith v. Board of School Commissioners of Mobile County	827 F.2d 684 (11th Cir. 1987)	Use of home economics, history and social studies books that "advance secular humanism and inhibit theistic religion"	No—books are religiously neutral
American Jewish Congress v. City of Chicago	827 F.2d 120 (4th Cir. 1987)	Nativity scene in city hall	Yes
Page v. Commissioner	823 F.2d 1263 (8th Cir. 1987)	Exemption from income tax on secular employment because of relationship with church	No
Stein v. Plainwell Community Schools	822 F.2d 1406 (6th Cir. 1987)	Invocations and benedictions at public high school commencement	Yes—only because language invoked Christ name—would be okay if nondenominational

Hernandez v. Commissioner of Internal Revenue	819 F.2d 1212 (1st Cir. 1987)	Disallowment of tax deduction to member of Church of Scientology for payment made to church for religious services offered at fixed charge set by Church	No
Phan v. Commonwealth of Virginia	806 F.2d 516 (4th Cir. 1986)	State constitution provision allowing state to provide assistance to handicapped students attending any college in the state and any nonsectarian college out of state	No
Stark v. St. Cloud State University	802 F.2d 1046 (8th Cir. 1986)	University policy allowing students to fulfill student teaching requirement at parochial school	Yes

Parents' Association v. Quinones	803 F.2d 1235 (2d Cir. 1986)	Federally funded remedial education program with separate services for female Hasidic Jews provided at public school	Yes
Protos v. Volkswagen of America, Inc	797 F.2d 129 (3d Cir. 1986)	Religious accommodation requirement of Title VII	No
Northwest Indian Cemetery Protective Association v. Peterson	795 F.2d 688 (9th Cir. 1986)	District Court's enjoinment of road construction and timbering on Indian sacred land on grounds that such activity impermissibly burdened Indians free exercise right	No
ACLU v. City of Birmingham	791 F.2d 1561 (6th Cir. 1986)	Placement and maintenance of nativity scene by city on lawn of city hall	Yes
United Christian Scientists v. Christian Science Board of Directors	829 F.2d 1152 (D.C. Cir. 1987)	Private law granting church extended copyright on all editions of religious text	No

Christian Science Reading Room v. City of San Francisco	784 F.2d 1010 (9th Cir. 1986)	Airport policy allowing rental of space to religious organizations	No
Bethel Baptist Church v. United States	822 F.2d 1334 (3d Cir. 1987)	Statutory amendments compelling participation in social security system by churches and other non-profit religious organizations	No
EEOC v. Fremont Christian School	781 F.2d 1362 (9th Cir. 1986)	Application of statutes to religious school prohibiting discriminatory health insurance practice	No
Friedman v. Board of County Commissioners of Bernalillo	781 F.2d 777 (10th Cir. 1985)	Latin cross and spanish motto translating "with this we conquer" on the county seal	Yes
May v. Cooperman	780 F.2d 240 (3d Cir. 1985)	Observance of 1 minute of silence at beginning of school day	Yes
Universidad Cent. de Bayamon v. NLRB	793 F.2d 383 (1st Cir. 1985)	NLRB jurisdiction over religious university	No

Rayburn v. General Conference of Seventh-day Adventists	772 F.2d 1164 (4th Cir. 1985)	Application of Title VII to sexual discrimination of women ministers	Yes (under entanglement prong)
Aguillard v. Edwards	765 F.2d 1251 (5th Cir. 1985)	State statute requiring teaching of creation along with evolution	Yes
Bell v. Little Axe Independent School District	766 F.2d 1391 (10th Cir. 1985)	1. Public school permitting religious meetings to be held on premise during school hours with public school teacher participation	Yes
		2. Equal access policy of school district	Yes
Mellon Bank v. United States	762 F.2d 283 (3d Cir. 1985)	Disallowance of charitable deduction on income tax return for bequest to nonprofit nondenominational cemetery	No

Grove v. Mead School District	753 F.2d 1528 (9th Cir. 1985)	School Board refusal to remove book from sophomore English curriculum based on parents religious objection	No
Katcoff v. Marsh	755 F.2d 223 (2d Cir. 1985)	Army chaplain program	No Remand to determine if financing in urban areas is ok
Catholic High School Association v. Culvert	753 F.2d 1161 (2d Cir. 1985)	State Labor Relation Board regulation of bargaining over parochial school employees	No
Bender v. Williamsport Area School District	741 F.2d 538 (3d Cir. 1984)	Student initiated nondenominational prayer club during regular scheduled activity period	Yes

Nartowicz v. Clayton County School District	736 F.2d 646 (11th Cir. 1984)	1. School practice of permitting student religious group to meet on school premise under faculty supervision	Yes
		2. School districts policy of permitting school public address system and bulletin boards to be used by churches for announcements	Yes
Felton v. United State	739 F.2d 48 (2d Cir. 1984)	Use of Federal funds to finance programs which involve providing public school teachers and other professionals to religious schools (on the premises) to provide remedial instruction	Yes
First Assembly of God, Alexandria v. City of Alexandria	739 F.2d 942 (4th Cir. 1984)	Zoning restrictions that effect church school	No

McCreary v. Stone	739 F.2d 716 (2d Cir. 1984)	Display of creche in public park at no expense to village	No
Donovan v. Tony & Susan Alamo Foundation	722 F.2d 397 (8th Cir. 1983)	Applicability of Fair Labor Standards Act to nonprofit religious organization	No
Americans United for Separation of Church & State v. School District of Grand Rapids	718 F.2d 1389 (6th Cir. 1983)	Coop educational arrangement for shared time and community education use of religious school facilities by public school district	Yes
Elbe v. Yankton Independent School District	714 F.2d 848 (8th Cir. 1983)	Textbook loan statute	No on the facial claim (Remand for further consideration of application of statute)
St. Elizabeth Community Hospital v. NLRB	708 F.2d 1436 (9th Cir. 1983)	Jurisdiction of NLRB as to hospital employees	No
Jaffree v. Wallace	705 F.2d 1526 (11th Cir. 1983)	Prayer law—Nondenominational prayer in schools	Yes
ACLU v. Rabun County Chamber of Commerce	698 F.2d. 1098 (11th Cir. 1983)	Cross on state park property	Yes (Rehearing)

Members of Jamestown School Committee v. Schmidt	699 F.2d 1 (1st Cir. 1983)	State statute providing bus transportation to nonpublic school children beyond school district boundaries	No
Donnelly v. Lynch	691 F.2d 1029 (1st Cir. 1982)	Nativity scene as part of city sponsored outdoor Christmas display	Yes
Hatcher v. Commissioner of Internal Revenue	688 F.2d 82 (10th Cir. 1979)	Mandatory participation in social security program	No
ACLU v. Rabun County Chamber of Commerce	678 F.2d 1379 (11th Cir. 1982)	Cross on state park property	Yes
EEOC v. Pacific Press Publishing Association	676 F.2d 1272 (9th Cir. 1982)	Application of Title VII of discrimination on basis of sex by church owned publishing house	No
Mueller v. Allen	676 F.2d 1195 (8th Cir. 1982)	Statute authorizing taxpayer to claim income tax deductions for their dependents' tuition, textbooks and transportation	No

Chambers v. Marsh	675 F.2d 228 (8th Cir. 1982)	Chaplain conducted prayer at state legislature	Yes
Lubbock Civil Liberties Union v. Lubbock Independent School District	669 F.2d 1038 (5th Cir. 1982)	School district policy permitting students to gather before or after regular school hours to voluntarily meet for religious purposes	Yes
Lanner v. Wimmer	622 F.2d 1349 (10th Cir. 1981)	City schools released time program permitting public school students to attend church operated seminars during regular school hours	
		1. Released time programs	No
		2.Promotion of seminar attendance	Yes
		3. Discretionary authority of school administration to grant credit for program	Yes

		4. Granting credit in satisfied general compulsory school attendance	No
Karen B. v. Treen	653 F.2d 897 (5th Cir. 1981)	State statute and derivative school board regulations which establish guidelines for student participation in prayer at school	Yes
EEOC v. Southwestern Baptist Theological Seminary	651 F.2d 277 (5th Cir. 1981)	Application of Title VII report requirements to seminary's nonministerial positions	No
Collins v. Chandler Unified School District	644 F.2d 759 (9th Cir. 1981)	School district permitted voluntary prayer at school assemblies	Yes
Grendel's Den, Inc. v. Goodwin	662 F.2d 88 (1st Cir. 1981)	State statute governing issuance of liquor licenses within 500 ft of church or school	No
Grendel's Den Inc v. Goodwin	662 F.2d 102 (1st Cir. 1981) (en banc)	Same	Yes

Jaffee v. Alexis	659 F.2d 1018 (9th Cir. 1981)	Administrative policy prohibiting all speech and fund solicitation activities conducted by religious groups in Department of Motor Vehicles	Yes
Nottelson v. Smith Steel Workers	643 F.2d 445 (7th Cir. 1981)	Civil Rights Act prohibiting unreasonable refusal to accommodate religiously motivated conduct and practice of employee	No
Valente v. Larson	637 F.2d 562 (8th Cir. 1981)	State act exempting religious societies which receive more than 50% of contributions from members of affiliated organizations from certain registration and disclosure requirements	Yes (Discriminates against some organizations. Would be okay if applied even handedly)

Gilfillan v. City of Philadelphia	637 F.2d 924 (3d Cir. 1980)	City expenditures for erection of altar and cross in connection with Mass to be given by Pope John Paul II during his visit and the city's involvement in the planning and coordination of the Mass	Yes
Chess v. Widmar	635 F.2d 1310 (8th Cir. 1980)	University regulation which denied right to conduct religious services in university owned building while allowing access to other groups	Yes
Brandon v. Board of Education	635 F.2d 971 (2d Cir. 1980)	Student organization for communal prayer meetings in public school immediately before school day begins	Yes

EEOC v. Mississippi College	626 F.2d 477 (5th Cir. 1980)	Application of Title VII to college controlled, owned and operated by religious group	No
Hall v. Bradshaw	630 F.2d 1018 (4th Cir. 1980)	Motorist prayer on state maps published and distributed by state department of transportation	Yes
Decker v. O'Donnell	661 F.2d 598 (7th Cir. 1980)	Payment of public funds for public service employment positions in elementary and secondary schools operated by sectarian or religious organization	Yes
Rhode Island Federation of Teachers AFL-CIO v. Norberg	630 F.2d 855 (1st Cir. 1980)	State statute granting state income tax deduction for tuition, textbooks and transportation	Yes

Florey v. Sioux Falls School District	619 F.2d 1311 (8th Cir. 1980)	Rules drawn up by school board permitting observance of holidays that are *both* religious *and* secular	No
United States v. Freedom Church	613 F.2d 316 (1st Cir. 1979)	IRS summons seeking to require pastor of church to produce church records to determine church's tax exempt status	No
Bogen v. Doty	598 F.2d 1110 (8th Cir. 1979)	Practice of having prayer by a local unpaid clergyman before county board meeting	No
Malnak v. Yogi	592 F.2d 197 (3d Cir. 1979)	Teaching of Transcendental Meditation in public schools	Yes
Public Funds for Public Schools of New Jersey v. Bryne	590 F.2d 514 (3d Cir. 1979)	Personal tax deduction for parents of students attending nonpublic elementary schools	Yes

Catholic Bishop of Chicago v. NLRB	559 F.2d 1112 (7th Cir. 1977)	NLRB jurisdiction over lay teachers at parochial school	Yes
Grutka v. Barbour	549 F.2d 5 (7th Cir. 1977), *cert denied* 97 S. Ct. 1706	NLRB as applied to lay teachers at parochial school	No
Meltzer v. Board of Public Instruction	548 F.2d 559 (5th Cir. 1977)	Morning bible readings, distribution of bibles and statutes requiring teachers to inculcate the practice of every christian virtue	Yes
Smith v. Smith	523 F.2d 121 (4th Cir. 1975)	Release-time program where public school students were released during school hours for religious instruction off school premises	No

Cummins v. Parker Seal Co.	516 F.2d 544 (6th Cir. 1975)	Provisions of Civil Rights Act of 1965 making it unlawful employment practices for employer to discharge any employee because of his religion	No
Daniels v. Waters	515 F.2d 485 (6th Cir. 1975)	State statute requiring any textbook expressing an opinion about the origin of man to be prohibited unless the textbook states that it is only theory and gives equal time to creation	Yes

Kings Garden Inc. v. FCC	498 F.2d 51 (D.C. Cir. 1974)	Communication act which requires enforcement of antibias regulation with respect to job positions having no substantial connection with program content or positions connected with programs having no religious dimension	No
Allen v. Morton	495 F.2d 65 (D.C. Cir. 1973)	Creche used in Christmas Pageant of Peace on the Ellipse	Yes
Anderson v. Laird	466 F.2d 283 (D.C. Cir. 1972), *cert denied* 93 S. Ct. 690 (1972)	Compulsory chapel attendance at military academies	Yes

FEDERAL DISTRICT COURTS

Walker v. San Fransisco Unified School District	761 F. Supp. 1463 (N.D. Cal. 1991)	1. Provision of Education Consolidation and Improvement Act of 1981 permitting the funding of remedial education services to educationally deprived sectarian school children	Yes
		2. School districts use of mobile classrooms parked off of parochial school premises	No
		3. Mobile classroom parked on parochial school premise	Yes
		4. School district's practice of taking cost of obtaining mobile classrooms "off the top" of its entire budget	No
Sherman v. Community Consol. School District	758 F. Supp. 1244 (N.D. Ill. 1991)	State statute providing for daily recitation of Pledge of Allegiance	No

Church of Scientology Flag Service Organization, Inc. v. City of Clearwater	756 F. Supp. 1498 (M.D. Fla. 1991)	Municipal ordinance requiring charitable organizations to file registration statement or make available to members private disclosure statements	No
EEOC v. Tree of Life Christian School	751 F. Supp. 700 (S.D. Ohio 1990)	Enforcement of EEOC Equal Pay Act	No (under entanglement prong
Lamont v. Schultz	748 F. Supp. 1043 (S.D.N.Y. 1990)	Use of public funds for construction, maintenance and operation of religious schools abroad pursuant to American Schools and Hospitals Abroad Program	Question Certified
Murray v. City of Austin	744 F. Supp. 771 (W.D. Tex. 1990)	City seal with latin cross based on founders coat of arms	No

Joki v. Board of Education	745 F. Supp. 823 (N.D.N.Y. 1990)	Public school displaying painting with religious theme in high school auditorium	Yes
Minnesota Federation of Teachers v. Nelson	740 F. Supp. 694 (D. Minn. 1990)	State act allowing public high school students to receive high school credit by taking courses at post secondary institutes—some religious—	No
Cohen v. City of Des Plaines	742 F. Supp. 458 (N.D. Ill. 1990)	State requiring special permit to operate day care center in single family resident district but not for day care centers in church building in same district	No

Walker v. San Francisco Unified School District	741 F. Supp. 30 (N.D. Cal. 1990)	1. Use of public funds at religiously neutral school located on premises of charitable or religious affiliated organization	No
		2. Chapter 2 of Education Consolidation and Improvement Act which provides financial assistance to state and local educational agencies	No

Bishop v. Aronov	732 F. Supp. 1562 (N.D. Ala. 1990)	University prohibited injection of religious beliefs or preferences during instructional time and conducting optional class to discuss Christian perspective on academic topics	No
Harris v. City of Zion	729 F. Supp. 1242 (N.D. Ill. 1990)	Religious symbols on 2 cities corp. seals	1st city—No 2nd city—Yes
Weisman v. Lee	728 F. Supp 68 (D.R.I. 1990)	Invocations and benedictions in form of prayer at public school graduation ceremonies	Yes

Pulido v. Cavazos	728 F. Supp. 1242 (W.D. Mo. 1989)	Public Funding of private schools providing Chapter 1 remedial education service	
		1. Take cost involved in administration of bypass of local education authorities in providing federal funding for remedial education to private schools off-the-top of state Chapter 1 allocation	No
		2. Take capital expenditures incurred as result of Supreme Court *Felton* decision off-the-top	Yes
		3. Remedial education to private school students by mobile or portable classrooms parked on parochial school campus	Yes

		4. Remedial education to private school students by mobile or portable classroom off parochial property	No
St. Bartholomew's Church v. City of New York	728 F. Supp. 958 (S.D.N.Y. 1989)	Statute under which landmark commission denied churches application to tear down activities building designated a landmark complex and replace it with highrise for church business	No
ACLU v. County of Delaware	726 F. Supp. 184 (S.D. Ohio 1989)	Nativity scene on courthouse lawn	Yes
Doe v. Small	726 F. Supp. 713 (N.D. Ill. 1989)	Private organizations display in city park of a painting depicting life of Christ	Yes

Doe v. Human	725 F. Supp. 1503 (W.D. Ark. 1989)	Bible classes provided by public schools during regular school hours and in school building for voluntary attendance by elementary school children	Yes
EEOC v. Jefferson Smurfit Corp.	724 F. Supp. 881 (M.D. Fla. 1989)	Civil Rights statute proscribing employment discrimination on ground of religion	No
Riveria v. East Otero School District	721 F. Supp. 1189 (D. Colo. 1989)	Distribution of religious literature in school by students—non-denominational Christian principles	No
Mendelson v. City of St. Cloud	719 F. Supp. 1065 (M.D. Fla. 1989)	Latin cross on city water tower	Yes
Allen v. Consolidated City of Jacksonville	719 F. Supp. 1532 (M.D. Fla. 1989)	Municipal resolution urging day of non-denominational voluntary prayer as indication of community wide declaration to "war on drugs"	No

Forte v. Coler	725 F. Supp. 488 (M.D. Fla. 1989)	Statute exempting child care facilities that were integral part of church or parochial schools from complying with state licensing requirements	No
Lundberg v. West Morona Community School District	731 F. Supp. 931 (N.D. Iowa 1989)	Allow minister to say prayer at high school graduation	Yes
United States Department of Labor v. Shenandoah Baptist Church	707 F. Supp. 1450 (W.D.N.C. 1980)	Fair Labor Act applied to church operated schools	No
Hewitt v. Joyner	705 F. Supp. 1443 (C.D. Cal. 1989)	County ownership and maintenance of park donated by sculptor with numerous sculptures reflecting religious themes	No
Roberts v. Madigan	702 F. Supp. 1505 (D. Colo. 1989)	1. Bible in school library	No
		2. Religious oriented books in classroom	Yes

		3. Teacher keeping personal bible out of sight during class hours	Yes
ACLU v. Wilkinson	701 F. Supp. 1296 (E.D. Ky. 1988)	1. State construction and use of structure resembling a biblical age stable on public grounds of state capital	No—as long as disclaimer posted
		2. State limitation to use display for nativity pageants	Yes
Kaplan v. City of Burlington	700 F. Supp. 1315 (D. Vt. 1988)	Menorah in city hall during Hanukkah	No
Smith v. Lindstrom	699 F. Supp. 549 (W.D. Va. 1988)	Erection of nativity scene on front lawn of county office building	Yes
Matther v. Village of Mundelein	699 F. Supp. 1300 (N.D. Ill. 1988)	Creche in holiday display on village hall front lawn	Yes
Wallace v. Washoe County School District	701 F. Supp. 187 (D. Nev. 1988)	Use of school facilities for regular and permanent weekly religious services	No

Jewish War Veterans v. United States	695 F. Supp. 3 (D.D.C. 1988)	Large cross on Marine Corp base	Yes
Clayton v. Place	690 F. Supp. 106 (W.D. Mo. 1988)	Prohibition of dancing on school property	Yes
Society of Separationist, Inc. v. Clements	677 F. Supp. 509 (W.D. Tex 1988)	Christmas carol program sponsored by Texas Public Employees Assoc.	No
Thompson v. Waynesboro Area School District	673 F. Supp. 1379 (M.D. Pa. 1987)	Student distribution of religious newspaper	No
Cammack v. Waihee	673 F. Supp. 1524 (D. Hawaii 1987)	Good Friday state legal holiday	No
Gregoire v. Centennial School District	674 F. Supp. 172 (E.D. Pa. 1987)	Rental of high school auditorium for magician's performance with evangelical religious message	No

Sherr v. Northport East-Northport Union Free School District	672 F. Supp. 81 (E.D.N.Y. 1987)	Limit of religious exemptions for mandatory inoculation of children as a condition for attending school to bona fide members of recognized religious organizations	Yes
Clark v. Dallas Independent School District	671 F. Supp. 1119 (N.D. Tex. 1987)	School district policy prohibiting student groups from meeting on campus immediately before or after school for religious purposes	No
ACLU v. City of Long Branch	670 F. Supp. 1293 (D.N.J. 1987)	Creation of Eruv on city property	No
ACLU v. Mississippi State General Service Administration	652 F. Supp. 380 (S.D. Miss. 1987)	Latin cross on side of state building	Yes

Warnke v. United States	641 F. Supp 1083 (E.D. Ky. 1986)	Regulation mandating that employing church designate portion of ministers income appropriate for parson's allowance exclusion	No
People Tags v. Jackson County Legislature	636 F. Supp. 1345 (W.D. Mo. 1986)	Zoning ordinance prohibiting adult bookstore and theater within 1500 feet of school or church	No
Bethel Baptist Church v. United States	629 F. Supp. 1073 (M.D. Pa. 1986)	Social Services amendment which imposes mandatory participation in social security system upon nonprofit institutions	No
Libin v. Town of Greenwich	625 F. Supp. 393 (D. Conn. 1985)	Cross on firehouse	Yes
ACLU v. City of St. Charles	622 F. Supp. 1542 (D.C. Ill. 1985)	Illuminated Latin Cross in city's annual Christmas display	Yes

United Christian Scientists v. Christian Science Board of Directors of the First Church of Christ, Scientist	616 F. Supp. 476 (D.D.C. 1985)	Private copy right law granting copyright of all editions of Science and Health to Trustees under Mary Baker Eddy's will	Yes
Burelle v. City of Nashau	599 F. Supp. 792 (D.N.H. 1984)	Erection and maintenance of privately owned creche on grounds of building which housed municipal government office	Yes
Greater Houston Chapter of ACLU v. Eckels	589 F. Supp. 222 (S.D. Texas 1984)	Three latin style crosses and the Star of David as part of war memorial in public park	Yes
Zwerling v. Reagan	576 F. Supp. 1373 (C.D. Ca. 1983)	Presidential proclamation of 1983 as the Year of the Bible	No

Berkshire Cablevision of Rhode Island v. Burke	571 F. Supp. 976 (D.R.I. 1983)	Requirement by Rhode Island division of Public Utilities and Carriers for cable television operator to provide service on their institutional networks to non profit institutes including religious ones	No
d'Errico v. Lesmeister	570 F. Supp. 1345 (D.N.D. 1983)	Portion of state tuition assistance program which provides for state financial aid to students attending private religious colleges	Yes
Duffy v. Las Cruces Public Schools	557 F. Supp. 1013 (D.N.M. 1983)	Statute authorizing local school boards to implement a daily moment of silence	Yes
Donovan v. Tony & Susan Alamo Foundation	567 F. Supp. 556 (W.D. Ark. 1982)	Application of Fair Labor Standards Act to nonprofit religious organization	No

Americans United for Separation of Church and State v. School District of Grand Rapids	546 F. Supp. 1071 (W.D. Mich. 1982)	Cooperative education arrangement for "shared time" and community educational use of religious school facilities by public school district	Yes
Jaffree v. Board of School Commissioners of Mobile County	554 F. Supp. 1104 (D. Ala. 1982)	School Prayer Law	No
Donnelly v. Lynch	525 F. Supp. 1150 (D.R.I. 1981)	Nativity scene in Christmas display	Yes
Jamestown School Committee v. Schmidt	525 F. Supp. 1045 (D.R.I. 1981)	State statute providing bus transportation within school district to nonpublic school children	Yes
Mueller v. Allen	514 F. Supp. 998 (D. Minn. 1981)	State statute authorizing taxpayers to claim tax deduction for dependents' tuition, textbooks and transportation	No
ACLU v. Rabun County Chamber of Commerce	510 F. Supp 886 (N.D. Ga. 1981)	Illuminated latin cross on state park property	Yes

McDaniel v. Essex International, Inc.	509 F. Supp. 1055 (W.D. Mich. 1981)	Title VII requirement for an attempt to accommodate the religious beliefs of employee	No
Citizens Concerned for Separation of Church and State v. City of Denver	508 F. Supp. 823 (D. Colo. 1981)	Displaying, storing and appropriating public funds for nativity scene as part of city's annual Christmas lighting program	No
Wilder v. Bernstein	499 F. Supp. 980 (S.D.N.Y. 1980)	State statutory scheme for provision of child care services which include religious matching	No
National Coalition for Public Education and Religious Liberty v. Harris	498 F. Supp. 1248 (S.D.N.Y. 1980)	Use of state funds for remedial education of parochial school students by public school teachers on the premises of parochial schools during regular school hours	No

Cromwell Property Owners Association v. Toffolon	495 F. Supp. 915 (D. Conn. 1979)	State statute authorizing transportation for children in district to nonpublic schools in adjacent districts and providing state reimbursement of cost of transportation	No
Grendel's Den Inc. v. Goodwin	495 F. Supp. 761 (D. Mass. 1980)	Statute governing issuance of liquor licenses within 500 feet of churches or schools	Yes
Voswinkel v. City of Charlotte	495 F. Supp. 588 (W.D.N.C. 1980)	Police chaplaincy program	Yes
Brandon v. Board of Education	487 F. Supp. 1219 (N.D.N.Y. 1980)	Community prayer meeting in public school prior to beginning of each school day	Yes
Decker v. United States Department of Labor	485 F. Supp. 837 (E.D. Wisc. 1980)	Funds under Comprehensive Employment Act to sectarian and religious schools	Yes

Americans United for Separation of Church and State v. Porter	485 F. Supp. 432 (W.D. Mich. 1980)	Dual enrollment program in which public school district leased portion of parochial schools for class use	Yes
Ring v. Grand Fork Public School District No. 1:	483 F. Supp. 272 (D.N.D. 1980)	Statute requiring Ten Commandments displayed in classroom	Yes
Citizens Concerned for Separation of Church and State v. City of Denver	481 F. Supp. 522 (D. Colo. 1979)	Nativity Display erected and maintained by government on public property in Christmas lighting display	Yes
EEOC v. Pacific Press Public Association	482 F. Supp. 1291 (N.D. Ca. 1979	EEOC exercise of jurisdiction over nonprofit corporation affiliated with a church and religiously oriented	No
Rhode Island Federation of Teachers v. Norberg	479 F. Supp. 1364 (D.R.I. 1979)	State income tax deduction for parents/ guardians for dependents' tuition, textbooks and transportation	Yes

Gilfillan v. City of Philadelphia	480 F. Supp. 1161 (E.D. Pa. 1979)	City expenditure of public funds to construct and prepare platform to serve as a base for an altar as well as a cross to be used in religious services during papal visit	Yes
Womens Services, P.C. v. Thone	483 F. Supp. 1022 (D. Neb. 1979)	State abortion bill requiring women receive certain information and wait 48 hours before undergoing abortion	No
Chess v. Widmar	480 F. Supp. 907 (W.D. Mo. 1979)	University regulation under which the students were denied right to conduct regular religious services in university owned buildings	No
Akron Center for Reproductive Health, Inc. v. City of Akron	479 F. Supp. 1172 (N.D. Ohio 1979)	City abortion ordinance stating human life begins at conception	No

Decker v. United States	473 F. Supp. 770 (E.D. Wis 1979)	Awards, grants and contracts made under Comprehensive Employment Training Act to religious institutions for employment of teachers and other school personnel	Yes
Florey v. Sioux Falls School District	464 F. Supp. 911 (D.S.D. 1979)	School board policy concerning Christmas assembly and allowance for some religious content presented in prudent and objective manner	No
Committee for Public Education and Religious Liberty v. Levitt	461 F. Supp. 1123 (S.D.N.Y. 1978)	State statute which reimburses private schools for performing state mandated pupil testing and record keeping	No
Crowley v. Smithsonian Institution	462 F. Supp. 725 (D.D.C. 1978)	Evolution Display	No

Lanner v. Wimmer	463 F. Supp. 876 (D. Utah 1978)	1. City time release program permitting public school students to attend church operated seminars during school hours	No
		2. Granting credit for biblical courses geared to enforcing religious beliefs	Yes
McCormick v. Hirsch	460 F. Supp. 1337 (M.D. Pa. 1978)	Jurisdiction of NLRB over parochial school employers where lay teachers seek to unionize	Yes
Surinach v. Pesquera de Busquets	460 F. Supp. 121 (D.P.R. 1978)	Governmental investigation into cost of parochial schools	No
Bogen v. Doty	456 F. Supp. 983 (D. Minn. 1978)	Nonpublic funded prayer by clergy at county board meeting	No

Public Funds for Public Schools of New Jersey v. Bryne	444 F. Supp. 128 (D.N.J. 1978)	State statute offering tax deduction to parents with dependent children in nonpublic elementary or secondary school	Yes
Malnak v. Yogi	440 F. Supp. 1284 (D.N.J. 1977)	Teaching of Transcendental Meditation in public schools	Yes
Goldsboro Christian Schools, Inc. v. United States	436 F. Supp. 1314 (E.D.N.C. 1977)	Nonexemption of private school for FICA and FUTA—(for racial discriminatory admission policy)	No
Filler v. Port Washington Union Free School District	436 F. Supp. 1231 (E.D.N.Y.)	New York Education Law—requiring public school districts to provide the district's resident children who attend nonpublic schools with all health and welfare services available to district public school children	No

Lendall v. Cook	432 F. Supp. 971 (E.D. Ark 1977)	State scholarship program which applies to public and private schools	No
Americans United for Separation of Church and State v. Blanton	433 F. Supp. 97 (N.D. Tenn. 1977)	State student assistance program (includes funding for private and public colleges, vocation and technical schools)	No
Hernandez v. Hanson	430 F. Supp. 1154 (D. Neb 1977)	School district requirement that students obtain prior approval before distributing literature within public school on behalf of non-school organization	No
Smith v. Board of Governors of University of North Carolina	429 F. Supp. 871 (W.D.N.C. 1977)	State program of tuition grants and scholarships	No
Jamestown School Comm. v. Schmidt	427 F. Supp. 1338 (D.R.I. 1977)	State statute providing transportation out of school district boundary for sectarian school pupils	Yes

Committee for Public Education and Religious Liberty v. Levitt	414 F. Supp. 1174 (S.D.N.Y. 1976)	State statute providing reimbursement to private schools of expenses allocable to performance of certain state mandated pupil testing	Yes
Wolman v. Essex	417 F. Supp. 1113 (S.D. Ohio 1976)	State statute making certain materials or service available to elementary and secondary school children attending nonpublic schools	No
Kleid v. Board of Education of Fulton, Kentucky, Independent School District	406 F. Supp. 902 (W.D. Ky. 1976)	State statute requiring inoculation of school children against certain diseases	No
Thomas v. Schmidt	397 F. Supp. 203 (D.R.I. 1975)	Expenditures of state and local funds to lease space from Catholic sectarian institution for public school classroom use	No

Bob Jones University v. Johnson	396 F. Supp. 597 (D.S.C. 1974)	Federal assistance to fundamentalist religious university through Virginia Educational Benefits Statute	No (under entanglement prong)
Smith v. Smith	391 F. Supp. 443 (W.D. Va. 1975)	Release time program in public school	Yes
Wilder v. Sugarman	385 F. Supp. 1013 (S.D.N.Y 1974)	State constitutional and statutory provision for child placement	No
Roemer v. Board of Public Works	387 F. Supp. 1282 (D. Md. 1974)	State statute providing public aid in form of noncategorical grants to eligible colleges and universities and prohibits use for sectarian purpose	No

Americans United for Separation of Church and State v. Dunn	384 F. Supp. (M.D. Tenn. 1974)	State tuition grant program which provides tuition grants for students attending church related colleges and universities as well as other colleges and universities	Yes
Jones v. Butz	374 F. Supp. 1284 (S.D.N.Y. 1974)	Humane Slaughter Act relating to ritual slaughter	No
Meek v. Pittenger	374 F. Supp. 630 (E.D. Pa. 1974)	State expenditures in connection with education of students in nonpublic schools.	
		1. State provided auxiliary service, loaning of textbooks, instructional material and sports equipment	No
		2. Loaning of movie projects other audio-visual equipment	Yes

Americans United for Separation of Church and State v. Budd	379 F. Supp. 872 (D. Kan. 1974)	State statute providing tuition grants to qualified students enrolled in private state colleges and universities	No, but impermissible if school gave preference to own religion, or required religious participation not eligible
Americans United for Separation of Church and State v. Board of Education of Beechwood Independent School District	369 F. Supp. 1059 (E.D. Ky. 1974)	Dual enrollment contract, where school district leased space in parochial school	Yes
Americans United for Separation of Church and State	359 F. Supp. 505 (D.N.H. 1973)	Dual enrollment arrangement between school district and parochial school	Yes
Public Funds for Public Schools v. Marburger	358 F. Supp. 29 (D.N.J. 1973)	State aid to parents of nonpublic school students—reimbursement for secular textbooks, materials and supplies	Yes

Kosydar v. Wolman	353 F. Supp. 744 (1972)	Tax credits to parents who incur educational expenses in excess of those generally born by parents for children in primary or secondary school	Yes
Committee for Public Education and Religious Liberty v. Nyquist	350 F. Supp. 655 (S.D.N.Y. 1972)	1. State statute providing for direct grants to nonpublic schools serving high concentration of low income families and providing for flat tuition to parents with income less than $5,000 whose children attend elementary or secondary nonpublic schools	Yes
		2. State income tax deduction	No

Americans United for Separation of Church and State v. Paire	348 F. Supp. 506 (D.N.H. 1972)	Facilities lease and dual enrollment agreement between school district and parochial school	Yes
Otero v. New York City Housing Authority	344 F. Supp. 655 (S.D.N.Y. 1972)	Preference to Jews for housing project because it was located near old historic synagogue	Yes
Committee for Public Education and Religious Liberty v. Levitt	342 F. Supp. 439 (S.D.N.Y. 1972)	State statute that provided payment of public funds to nonpublic schools that imposed religious restrictions on admissions, required attendance of pupils at religious activities and where religious mission was integral part of teaching	Yes
Wolman v. Essex	342 F. Supp. 399 (S.D. Ohio 1972)	Educational grants to parents with children in nonpublic schools	Yes

Lemon v. Sloan	340 F. Supp. 300 (E.D. Pa. 1972)	Reimbursement of tuition paid to parent who send children to nonpublic schools	Yes
Americans United for Separation of Church and State v. Oakey	339 F. Supp. 545 (D. Vt. 1972)	State statute enabling town or school district to provide state approved teachers and grant aid to nonpublic schools for teachers and educational material	Yes
Lemon v. Kurtzman	348 F. Supp. 300 (E.D. Pa. 1972)	Payment of claim to church related schools under Nonpublic Elementary and Secondary Education Act held to be unconstitutional by the Supreme Court	No if cost incurred before June 28, 1971 Supreme Court decision
Allen v. Morton	333 F. Supp. 1088 (D.D.C. 1971)	Construction and maintenance of creche in Christmas Pageant of Peace on Ellipse	No

Brusca v. State of Missouri State ex rel State Board of Education	332 F. Supp. 275 (D. Mo. 1971)	Provision of Missouri Constitution and implementing statutes which establish and provide for funding of free public school systems and prohibit use of public funds to aid religious or sectarian schools	No
Johnson v. Sanders	319 F. Supp. 421 (D. Conn. 1970)	State nonpublic Secular Education Act allowing state to purchase secular education services supplied to children	Yes
Tilton v. Finch	312 F. Supp. 1191 (D. Conn. 1970)	Federal grants to church related colleges and universities for construction of academic facilities	No
In re Green	73 B.R. 893 (Bankr. W.D. Mich. 1987)	Chapter 13 plan allowing debtor to tithe	No

STATE COURTS

Alabama

Alabama Education Association v. James	373 So. 2d 1076 (Ala. 1979)	State statute establishing student assistance program providing state grants for postsecondary education	No
Opinion of the Justice	291 Ala. 301, 280 So. 2d 547 (1973)	Bill providing tuition grants to resident students attending private colleges and universities in Alabama	Yes

Alaska

Bonjour v. Bonjour	598 P.2d 1233 (Alaska 1979)	State statute specifying that religious needs of minor child could be considered in awarding custody	No

Arkansas

Cortez v. Independence County	287 Ark. 279, 698 S.W.2d 291 (1985)	County issuance of educational facilities bond to finance construction and physical improvements at private church sponsored college	No

California

Woodland Hills Homeowners Organization v. Los Angeles Community College District	266 Cal. Rptr. 767 (Ct. App. 1990)	Long term lease of community college district surplus land to religious organization	No
Sands v. Morongo Unified School District	53 Cal. 3d 863, 809 P.2d 809, 812 Cal. Rptr. 34 (1991), *rev'g* 214 Cal. App. 3d 45, 262 Cal. Rptr. 452 (Ct. App. 1989)	Nonsectarian invocation and benedictions at public high school graduation	Yes
Okrand v. City of Los Angeles	207 Cal. App. 3d 566, 254 Ca. Rptr. 913 (Ct. App. 1989)	Unlit menorah display near Christmas tree rotunda	No

Jimmy Swaggart Ministries v. Board of Equalization	224 Ca. App. 3d 1269, 250 Cal. Rptr. 891 (Ct. App. 1988)	Imposition of sales and use tax, paid under protest, on religious organization	No
Perumal v. Saddleback Valley Unified School District	198 Cal. App. 3d 64, 243 Cal. Rptr. 545 (Ct. App. 1988)	School board's denial of distribution of religious club flyers on high school campuses and publication of clubs advertisements in high school yearbook	No
Bennett v. Livermore Unified School District	193 Cal. App. 3d 1012, 238 Cal. Rptr. 819 (Ct. App. 1987)	Invocation at high school graduation	Yes
O'Connor Hospital v. Superior Court (Cleu)	240 Cal. Rptr 766 (Ct. App. 1987)	Granting hospital immunity for suit in priest's action	No
International Society for Krishna Consciousness, Inc. v. County of Los Angeles	169 Cal. Rptr 405 (1980)	Welfare exemption in Revenue and Tax Code	No

Feminist Women's Health Center, Inc. v. Philibosian	157 Cal. App. 3d 1076, 203 Cal. Rptr. 918 (1978)	DA's burial of aborted fetus in private cemetery after becoming aware of religious burial service	Yes
Fox v. City of Los Angeles	22 Cal. 3d 792, 587 P.2d 663, 150 Cal. Rptr. 867 (1978)	Lit singled barred cross on city hall	Yes
Fox v. City of Los Angeles	70 Cal. App. 3d 885, 139 Cal. Rptr. 180 (Ct. App. 1977)	Illumination of city hall window with a cross on Christmas eve and Christmas	No
Johnson v Huntington Beach Union High School District	68 Cal. App. 3d 1, 137 Ca. Rptr. 43 (Ct. App. 1977)	Voluntary student bible club meeting on public school campus during school day	Yes
Mandel v. Hodges	54 Cal. App. 3d 596, 127 Cal. Rptr. 244 (Ct. App. 1976)	Closure of state offices on Good Friday between 12 and 3	Yes

Citizens for Parental Rights v. San Mateo County Board of Education	51 Cal. App. 3d 1, 124 Cal. Rptr. 68 (Ct. App. 1975)	Sexual Education Course	No
California Education Facilities Authority v. Priest	12 Cal. 3d 593, 526 P.2d 513, 116 Cal. Rptr 361 (1974)	Education Facilities Authority Act which authorizes the issuance of revenue bonds and use of proceeds to rehabilitate or construct education facilities at private colleges and universities	No

Colorado

Conrad v. City of Denver	724 P.2d 1309 (Colo. 1986)	Nativity display on steps of city and county building	No

Young Life v. Division of Employment and Training	650 P.2d 515 (Colo. 1982)	Excluding youth organization whose purpose is to spread the Christian message to young people from church exemption of unemployment tax	No
Americans United for Separation of Church Fund, Inc. v. Colorado	648 P.2d 1072 (Colo. 1982)	Colorado Student Incentive Grant Program	No

Connecticut

Caldor v. Thorton	191 Conn. 336, 464 A.2d 785 (1983)	State statute prohibiting dismissal for refusal to work on employees designated sabbath	Yes
Griswold Inn, Inc. v. State	183 Conn. 552, 441 A.2d 16 (1981)	State Statute prohibiting the sale of alcoholic beverages on Good Friday	Yes

Delaware

Keegan v. University of Delaware	349 A.2d 14 (Del. 1975)	Religious worship services in common rooms of dormitories at state university	No

District of Columbia

Konecny v. District of Columbia	447 A.2d. 31 (D.C. 1982)	Denying of employment compensation benefits to terminated church employee	No

Georgia

McDonnell v. Episcopal Diocese of Georgia	191 Ga. App. 174, 3871 S.E.2d 126 (Ct. App. 1989)	Jurisdiction of civil judicial system over ecclesiastical issues	Yes

Idaho

Gregersen v. Blume	113 Idaho 220, 743 P.2d 88 (1987)	State licensing of barber shop when proprietor had sincere religious beliefs for not licensing	No

Illinois

Pre-School Owners Ass'n of Illinois v. Department of Children and Family Service	119 Ill. 2d 268, 518 N.E. 2d 1018 (1988)	Child Care Act exempting sectarian day care programs	No

In re Tisckos	161 Ill. App. 3d 302, 514 N.E.2d 523 (Ill. App. 1987)	Court order requiring father to arrange for daughters attendance at church services of faith in which she was being raised by mother during periods of visitation	No
Zucco v. Garrett	150 Ill. App. 3d 146, 501 N.E.2d 875 (Ill. App. 1986)	Courts consideration of religious beliefs as a factor in its decision to modify joint custody provision	Yes
Heckmann v. Cemeteries Association of Greater Chicago	127 Ill. App. 3d 451, 468 N.E.2d 1354 (Ill. App. 1984)	Statute permitting certain burials on Sundays and legal holidays	No

People ex rel Klingen v. Howlett	56 Ill.2d 3, 305 N.E.2d 129 (1973)	State statute granting parent of a child attending non-public school a yearly state grant for partial payment for expenses and state grant for textbooks and auxiliary services	Yes
Cecrle v. Illinois Educational Facilities Authority	52 Ill.2d 312, 288 N.E.2d 399 (1972)	Act providing for financing of institutions of higher education and excluding facilities that which may be used for sectarian instruction and study	No

Indiana

Terpstra v. State	529 N.E.2d 839 (Ind. Ct. App. 1988)	State requirements to enforce registration of auto's and driver's licenses which conflict with religious belief forbidding entering a contract with state or use of numbers for purpose of identification	No

Kentucky

Farris v. Minit Mart	684 S.W.2d 845 (Ky. 1985)	State statute stating that no license for the retail sale of alcoholic beverages shall be issued for any premises located within 200 feet of church or school	Yes
Stone v. Graham	599 S.W.2d 157 (Ky. 1980)	Statute placing duty upon superintendent of Public Instruction to post copy of Ten Commandment in every public school prayer classroom on receipt of voluntary contributions made for such purpose to State Treasury	No

Maryland

Baltimore Lutheran High School Association v. Employment Security Administration	302 Md. 649, 490 A.2d 701 (1985)	Denial of exemption of religious school for unemployment taxes	No

Massachusetts

Alberts v. Devine	479 N.E.2d 113 (Mass. 1985)	Judicial inquiry into church proceeding culminating in minister's failure to gain reappointment	No
Attorney General v. Bailey	386 Mass. 367, 436 N.E.2d 139 (1982)	Action requiring reporting of name, age and residence of every child attending church operated institution	No
Kent v. Commissioner of Education	380 Mass. 235, 402 N.E.2d 1340 (1980)	School prayer law (provided that teachers were to announce that period of prayer could be offered by student volunteer)	Yes

Colo v. Treasurer and Receiver General	378 Mass. 550, 392 N.E.2d 1195 (1979)	Expenditure of public monies to pay salary of legislative chaplains	No
Arno v. Alcoholic Beverages Control Commission	384 N.E.2d 1223 (Mass. 1979)	State statute prohibiting granting of liquor license to premises located within 500 feet radius of school or church	No

Michigan

McLeod v. Providence Christian School	160 Mich. App. 333, 408 N.W.2d 146 (Ct. App. 1987)	Civil Rights Act—did not allow school to fire teacher with preschool age children when religious doctrine forbad employment of women with preschool age children	No
Sheridan Road Baptist Church v. Department of Education	426 Mich 462, 396 N.W.2d 373 (1986)	Requirement of teachers certification and certain curriculum taught	No

Snyder v. Charlotte Public School District	421 Mich. 517, 365 N.W.2d 151 (1984)	Non essential elective course offered to public school students and nonpublic school students equally	No
Sheridan Road Baptist Church v. Department of Education	348 N.W.2d 263 (Mich. App. 1984)	Curriculum and teacher certification requirement	No
Snyder v. Charlotte Public School District	333 N.W.2d 542 (Mich. App. 1983)	School district refusal to let private school students into public school band class	No
Citizens to Advance Public Education v. Porter	64 Mich. App. 168, 237 N.W.2d 232 (Ct. App. 1975)	Shared time secular education programs	No—as long as under authority and control of public school, operated by public school and open to all public school students

Minnesota

Minneapolis Community Development Agency	439 N.W.2d 708 (Minn. 1989)	Condemnation of property and authorization of quick tax	No

Minnesota Higher Education Facilities Authority v. Hawk	232 N.W.2d 106 (Minn. 1975)	Issuance of tax exempt revenue bonds by the authority to refinance indebtedness of private religious affiliated colleges in construction of secular education facilities	No
Minnesota Civil Liberties Union v. State	302 Minn. 216, 224 N.W.2d 344 (1974)	Tax credit to parents or guardians of children in nonpublic schools	Yes

Missouri

Americans United for Separation of Church and State v. Rogers	538 S.W.2d 711 (Mo. 1976)	Missouri Financial Assistance Program	No

Montana

Matter of S.P.	241 Mont. 190, 786 P.2d 642 (1990	Placement and payment to ministers for foster care	No
Miller v. Catholic Diocese of Great Falls	224 Mont. 113, 728 P.2d 794 (1986)	Determination of tort case of bad faith by civil court	Yes

Nebraska

Cunningham v. Lutjeharm	231 Neb. 756 437 N.W.2d 806 (1989)	State statute requiring public school districts to purchase and loan textbooks to students in private schools	No
State ex rel Bouc v. School District of City of Lincoln	211 Neb. 731 320 N.W.2d 472 (1982)	State statute providing for transportation for children in private schools	No
State ex rel Rogers v. Swanson	912 Neb. 125, 219 N.W.2d 726 (1974)	Statute providing for public grants to students in need of tuition aid to attend private colleges	Yes
State ex rel School District of Hartington v. Nebraska State Board of Education	188 Neb. 1, 195 N.W.2d 161 (1972)	Grant of federal funds to provide special instructional activities (public school leasing of parochial classrooms)	No

New Hampshire

Opinion of the Justices	113 N.H. 297, 307 A.2d 558 (1973)	1. State statute authorizing and encouraging recitation of the Lord's Prayer in public schools	Yes
		2. Amendment which would authorize voluntary silent mediation and Pledge of Allegiance	No

New Jersey

Ran-Dav's County Kosher, Inc. v. State of New Jersey	243 N.J. Super. 232, 579 A.2d 316 (Super Ct. App. Div. 1990)	State kosher regulations	No
Market Street Mission v. Bureau of Rooming and Boarding House Standards, Department of Community Affairs, State of New Jersey	110 N.J. 335, 541 A.2d 668 (1988)	Rooming and Boarding House Act as applied to religious rescue mission	No

In re Estate of Dickerson	193 N.J. Super. 353, 474 A.2d 30 (1983)	Privately funded scholarship trust for student who intended to study for Protestant ministry	No
New Jersey State Board of Higher Education v. Board of Directors of Shelton College	90 N.J. 470, 448 A.2d 988 (1982)	State closing down of religious college until obtained license	No
Marsa v. Wernik	86 N.J. 232, 430 A.2d 888 (1981)	Nondenominational invocation or silent mediation at start of regular meeting of borough council	No
Playcrafters Members v. Teaneck Board of Education	177 N.J. Super. 66, 424 A.2d 1192 (Super. Ct. App. Div. 1981)	School board policy prohibiting extracurricular activities on Friday evenings, Saturday days and Sunday mornings	No
State v. Celmer	80 N.J. 405, 404 A.2d 1 (N.J. 1979)	Statute giving camp meeting association powers of a municipality	Yes

Marsa v. Wernick	163 N.J. 589, 395 A.2d 530 (Super. Ct. Ch. Div. 1978)	Nondenominational invocation or a silent mediation of about 1 minute at the start of regular meeting of city council	No
Resnik v. East Brunswick Township Board of Education	77 N.J. 88, 389 A.2d. 944 (1978)	Use of public school facilities by religious group during noninstructional hours	No
Schaad v. Ocean Grove Camp Meeting Association	72 N.J. 237, 370 A.2d 449 (1977)	1. Ordinance prohibiting sale of newspapers in Association on Sundays and prohibiting driving of vehicle on Association streets on Sundays	Yes
		2. Granting of police power to Association	No
State v. Celmer	143 N.J. Super. 371, 362 A.2d 1330 (Monmouth Co. Ct. 1976)	Giving power to camp meeting association same as that of a municipality	Yes

Resnick v. East Brunswick Township Board of Education	135 N.J. Super. 257, 343 A.2d 127 (1975)	Use of public school as Sunday School and Hebrew language instruction	Yes
Clayton v. Kervick	59 N.J. 583, 285 A.2d 11 (1971)	State Educational Facilities Authority Law	No
New Mexico			
Pruey v. Dept. of Alcoholic Beverage Control	104 N.M. 10, 715 P.2d 458 (1986)	Local option allowing districts to permit or reject Sunday sales of liquor	No
New York			
Claim of Klein	164 A.D.2d 9, 563 N.Y.S.2d 132 (App. Div. 1990)	Unemployment insurance benefits denied to teacher who had been employed at religious high school	No

Board of Education v. Wieder	132 A.D.2d 409, 522 N.Y.S.2d 878 (App. Div. 1987)	Board of Education to provide special educational and related services for community's handicapped Hasidic children in facilities and under conditions that constitute a religious setting	Yes
Smith v. Community Board	491 N.Y.S.2d 584, 182 Misc. 2d. 944 (Sup. Ct. 1985)	Construction and maintenance of Eruv on public property by Jewish organization	No
Trietly v. Board of Education	65 A.D.2d 1, 409 N.Y.S.2d 912 (App. Div. 1978)	Bible clubs in public high schools	Yes
Cathedral Academy v. State	47 A.D.2d 390, 366 N.Y.S.2d 900 (1975)	Reimbursement of funds expended for certain school related services	Yes
Cathedral Academy v. State	77 Misc.2d 977, 354 N.Y.S.2d 900 (1974)	Reimbursement of funds expended for certain school related services	Yes

Greve v. Board of Education	43 A.D.2d 851, 351 N.Y.S.2d 715 (App. Div. 1974)	Board of education to supply special teachers for auditory handicapped parochial school child in same manner as board provides its own schools to students with like handicaps	No
Dickens v. Ernesto	30 N.Y.2d 61, 281 N.E.2d 153, 330 N.Y.S.2d 346 (1972)	Placement of child with adoptive parents of same religion	No
College of New Rochelle v. Nyquist	37 A.D.2d 461 326 N.Y.S.2d 765 (1971)	State aid to private Catholic girls college	No

North Carolina

Heritage Village Church and Missionary Fellowship, Inc. v. State	299 N.C. 399, 263 S.E.2d 726 (1980)	Solicitation of Charitable Funds Act exemption from licensing requirements for all religious organizations except those whose financial support is derived primarily from contributions of nonmembers	Yes

North Dakota

Best Products Co., Inc. v. Spaeth	461 N.W.2d. 91 (1990)	Sunday Closing Law	No
State v. Anderson	427 N.W.2d 316 (N.D. 1988)	Compulsory school attendance law—which requires that teachers be certified	No
State v. Shaver	294 N.W.2d 883 (N.D. 1980)	Compulsory School Attendance Law	No

Ohio

Kinney State v. Mishimens	22 Ohio Misc.2d 43, 490 N.E.2d 931 (1984)	Statute proscribing endangerment of children by parents/custodians but providing exemption for those who treat physical or mental illness or defect by spiritual means accorded by religion	Yes

In re Landis	5 Ohio App. 3d 22, 448 N.E.2d 845 (Ct. App. 1982)	Separation agreement (Final Decree) requiring husband to pay child's education at religious institution	No
Protestants and Other Americans for Separation of Church and State v. Essex	28 Ohio St. 2d 79, 275 N.E.2d 603 (1971)	Statute authorizing payments of service and materials to pupils attending nonpublic schools for guidance, testing and counseling program	No

Oklahoma

State ex rel. Roberts v. McDonald	787 P.2d 466 (Okla. App. 1989)	State licensing requirement for boy's ranch operated by religious organization	No
Tulsa Area Hospital Council Inc. v. Oral Roberts University	626 P.2d 316 (Okla. 1981)	Granting of certification of need to university for construction of hospital in which holistic medicine would be practiced	No

Oregon

Kay v. David Douglas School District	79 Or. App. 384, 718 P.2d 875 (Ct. App. 1986)	Religious invocation in high school commencement exercise	Yes
Eugene Sand and Gravel Inc. v. City of Eugene	276 Or. 1007, 558 P.2d 338 (1976)	City authorization to erect by private parties a large cross in municipal park on butte overlooking city	No

Pennsylvania

Springfield School District, Delaware County v. Department of Education	397 A.2d 1154 (Pa. 1979)	Statute which requires both nonpublic and public school pupils to be transported to their schools of attendance within district and within ten miles outside district boundaries	No

Commonwealth Department of Education v. First School	348 A.2d 458 (Pa. Cmwlth 1975)	Statute authorizing reimbursement of nonpublic schools for expenditures for teachers' salaries, textbooks and other instructional material	Yes
Estate of Laning	339 A.2d 520 (Pa. 1975)	Enforcement of will with condition of inheritance as "member in good standing of Presbyterian church"	No

South Carolina

Durham v. McLeod	192 S.E.2d 202 (S.C. 1972)	Act authorizing state agency to make, insure or guarantee loans to students to defray their expenses at any institute of higher learning	No
Hunt v. McNair	187 S.E.2d 645 (S.C. 1980)	Educational Facilities Authority Act	No

South Dakota

Matter of North Western Lutheran Academy	290 N.W.2d 845 (S.D. 1980)	Unemployment compensation laws as applied to church schools	No

Tennessee

Covant Community Church v. Lowe	698 S.W.2d 339 (Tenn. 1985)	Privilege tax on occupancy of hotel and motel rooms as applied to church which rented rooms solely for religious worship and instruction	No
Steele v. Waters	527 S.W.2d 72 (Tenn. 1975)	Statute proscribing biology textbooks give equal time to creation as evolution, state that evolution only a theory, and excludes occult or satanical beliefs of human origin	Yes

Texas

Bullock v. Texas Monthly, Inc.	731 S.W.2d (Tex. Ct. App. 1987)	Statutory exemption from sales tax granted religious periodicals	No
State v. Corpus Christi People's Baptist Church, Inc.	683 S.W.2d 692 (Tex. 1984)	State licensing of church child care facilities	No

Utah

Manning v. Sevier County	517 P.2d 549 (Utah 1973)	1. Agreement between county, city and church whereby city/county would finance two-thirds cost of hospital, and involved lease/rent back program	No
		2. Gift of hospital by county to church controlled corporation	Yes

Virginia

Miller v. Ayres	214 Va. 171, 198 S.E.2d 634 (1973)	Statute relating to tuition assistance loans at private institution	No
Miller v. Ayres	213 Va. 149, 191 S.E.2d 261 (1972)	Statute relating to tuition assistance loans at private institution	No

Washington

State v. Motherwell	114 Wash. 2d 353, 788 P.2d 1066 (1990)	Child abuser reporting statute as applied to religious organization	No
In re Dependency of J.L.T.	56 Wash. App. 683, 785 P.2d 829 (Ct. App. 1990)	Statute permitting religious affiliated child welfare agencies to file termination petitions	No
Witters v. State Commission for the Blind	112 Wash. 2d 363, 771 P.2d 1119 (1989)	Denial of financial vocational assistance by Commission to student pursuing bible studies degree	No

State v. Wendt	47 Wash. App. 42, 735 P.2d 1334 (Ct. App. 1987)	Assignment of case to Labor Department because religious beliefs do not permit him to bring law suit in own name	No
Bill of Rights Legal Foundation v. Evergreen State College	44 Wash. App. 690, 723 P.2d 483 (Ct. App. 1986)	Co-sponsored lecture series by state college and church	No
State ex rel. Boyles v. Whatcom County Super. Ct.	103 Wash. 2d 610, 694 P.2d 27 (1985)	Single work release program which mandated participation in religious activities	Yes
Witter v. Commission for the Blind	1202 Wash. 2d 624, 689 P.2d 53 (1984)	Denial of financial vocational assistance by Commission for student pursuing a bible studies degree	Yes

Grant v. Spellman	99 Wash. 2d 815 664 P.2d 1227 (1983)	County refusal to grant non-union public employee statutory exemption from union security clause on grounds that he is not member of church or religious body	Yes
Weiss v. Bruno	82 Wash. 2d 199, 509 P.2d 973 (1973)	Financial assistance in grades 1-12 for needy and disadvantaged students attending private and public schools ad thus providing tuition support programs for students attending independent or private institutions of higher education	Yes

Wisconsin

Shannon and Riordan v. Board of Zoning Appeals of Milwaukee	153 Wis. 2d 713, 451 N.W.2d 479 (1989)	Zoning statute and ordinance that prohibited placement of community based residential facilities within 2500 feet of existing facilities	No
American Motors Corp. v. State	93 Wis. 2d 14, 286 N.W.2d 847 (Ct. App. 1979)	Fair Employment Act to require employer to make reasonable accommodation to religious practices of employees	No
State v. Linder	91 Wis. 2d 145, 280 N.W.2d 773 (1979)	Statute creating Wisconsin Health Facilities Authority as mechanism for financing improvements for private, nonprofit health care facilities through sale of tax exempt bonds	No

State ex rel Holt v. Thompson	66 Wis. 2d 659 225 N.W.2d 678 (1975)	Statute governing time release for religious instruction of public school students	No
State ex rel. Warren v. Nusbaum	64 Wis. 2d 314, 219 N.W.2d 577 (1974)	State statute allowing school board to contract with sectarian institution for goods and services that provide special educational needs of handicapped children	
State ex rel Warren v. Nusbaum	55 Wis. 2d 316, 198 N.W.2d 650 (1972)	State statute authorizing state to contract with a church related university for the purchase of dental education for resident in states only dental school	Yes

APPENDIX B

CASES CITING ENDORSEMENT ANALYSIS

Supreme Court of United States

CASE	CITE	ISSUE	USE OF ENDORSEMENT ANALYSIS
County of Allegheny v. ACLU	492 U.S. 573, 109 S. Ct. 3086 (1989) (O'Connor, J., concurring)	Creche in county courthouse and menorah outside city and county building	Use endorsement analysis to declare creche violation but not menorah
Hernandez v. Commissioner of Internal Revenue	490 U.S. 680, 109 S. Ct. 2136 (1989) (O'Connor, J., dissenting)	Provision of Internal Revenue Code governing charitable deductions	Apply Lemon Test and find no violation. Endorsement terminology used in second prong and dissent
Texas Monthly, Inc. v. Bullock	489 U.S. 1, 109 S. Ct. 890 (1989)	Sales tax exemption for religious periodicals	Combines endorsement terminology with the Lemon Test to find exemption invalid
Corporation of Presiding Bishop v. Amos	483 U.S. 327, 107 S. Ct. 2862, 97 L.Ed.2d 273 (1987) (O'Conner, J., concurring)	Application of religious exemption to Title VII's prohibition against religious discrimination to secular nonprofit activities of religious organization	No violation under Lemon Test. O'Connor concurs in judgment and argues for endorsement analysis

Edwards v. Aguillard	482 U.S. 578, 107 S. Ct. 2573, 96 L.Ed.2d 510 (1987)	Louisiana Balance Treatment for Creation-Science and Evolution-Science in Public School Instruction Act	Use Lemon Test to invalidate Act with some citing to O'Connor's endorsement analysis
Witter v. Washington Department of Services for the Blind	474 U.S. 481, 106 S. Ct. 748, 88 L.Ed.2d 846 (1986) (O'Connor, J., concurring)	Financial vocational assistance to blind student pursuing bible studies degree at Bible college	Use Lemon Test to find that aid is allowable. O'Connor mentions endorsement in her concurrence
Grand Rapids School District v. Ball	473 U.S. 373, 105 S. Ct. 3216, 87 L.Ed.2d 267 (1985) (O'Connor, J., concurring)	School districts shared time and community education programs	Use Lemon Test to find unconstitutional and use endorsement terminology in discussing the second prong
Wallace v. Jaffree	472 U.S. 38 (1984) (O'Connor, J., concurring)	State statute authorizing one minute period of silence in public schools for meditation or voluntary prayer	Endorsement terminology incorporated in second prong and discussed in O'Connor's concurrence
Lynch v. Donnelly	465 U.S. 668, 104 S. Ct. 1355, 79 L.Ed.2d 604 (1984) (O'Connor, J., concurring)	Inclusion of nativity scene in Christmas display	Apply Lemon Test to find creche allowable. O'Connor suggests endorsement analysis in concurrence

Courts of Appeal

Harris v. City of New York	927 F.2d 1401 (7th Cir. 1991)	Elementary school directives for the removal of religious books from the class library, prohibiting teacher from reading or keeping the bible on his desk during school hours and removal of the bible from the school library	The first two directives where found to be permissible while the third directive was found to be in violation of the Establishment Clause. Court use the Lemon Test but incorporated endorsement terminology into the second prong
Doe v. Village of Crestwood	917 F.2d 1476 (7th Cir. 1990)	Municipal festival at which Roman Catholic Mass was held	Violation of Establishment-clause under the endorsement analysis
United States v. Board of Education for School District of Philadelphia	911 F.2d 882, 898 (3d Cir. 1990) (Ackerman, J., concurring)	Refusal to allow teacher to wear religious grab	Court decide this under Free Exercise. Concurring opinion state that case should have been decided under the Establishment clause by endorsement analysis

Weisman v. Lee	908 F.2d 1090 (1st Cir. 1990)	Inclusion of invocations and benedictions in form of prayer in public school graduation ceremonies	Violation of Establishment clause. Use endorsement terminology as part of Lemon Test
Gregoire v. Centennial School District	907 F.2d 1366 (3d Cir. 1990)	Use of high school auditorium by religious organizations	No violation of Establishment clause. Use endorsement terminology as part of second prong in Lemon Test
Smith v. County of Albemarle	895 F.2d 953 (4th Cir. 1990)	Erection of nativity scene on front lawn of county office building	Violation of the Establishment clause. Endorsement terminology used as part of Lemon Test
Kaplan v. City of Burlington	891 F.2d 1024 (2d Cir. 1989)	Menorah in city hall during Hanukkah	Violation of Establishment clause using endorsement analysis
Clayton v. Place	889 F.2d 192, 195 (8th Cir. 1989) (Lay, J., dissenting)	School district policy prohibiting dancing	Though the majority finds no violation of the Establishment Clause, the dissent finds the school district policy in violation of the second prong of the Lemon Test which incorporates endorsement terminology

ACLU v. Allegheny County	842 F.2d 655 (3d Cir. 1988)	Placement of creche inside main entrance of city courthouse and display of menorah on steps of city building	Violation of Establishment. Endorsement terminology used in second prong of Lemon Test
Van Zandt v.Thompson	839 F.2d 1215 (7th Cir. 1988)	State house resolution authorizing and making plans for the conversion of hearing room in state capital into prayer room	No violation of the Establishment Test. Endorsement terminology used as in first prong of Lemon Test and to analyze whether prayer room is an accommodation of religion
Smith v. Board of School Commissioners of Mobile County	827 F.2d 684 (11th Cir. 1987)	Use of home economics, history and social studies books that "advance secular humanism and inhibit theistic religion"	No violation of Establishment clause. Endorsement terminology incorporated under second prong of Lemon Test

Hernandez v. Commissioner of Internal Revenue	819 F.2d 1212 (1st Cir. 1987)	Disallowment of tax deduction to member of church of scientology for payment made to church for religious services offered at fixed charge set by church	No violation of Establishment clause. Endorsement analysis language used along with the Lemon Test
Stark v. St. Cloud State University	802 F.2d 1046 (8th Cir. 1986)	University policy allowing students to fulfill student teaching requirement at parochial school	Violation of Establishment Clause. Endorsement terminology used along side Lemon Test
ACLU v. City of Birmingham	791 F.2d 1561 (6th Cir. 1986)	Placement and maintenance of nativity scene by city on lawn of city hall	Violation of Establishment clause. Endorsement terminology used in second prong of Lemon Test
Friedman v. Board of County Commissioners of Bernalillo	781 F.2d 777 (10th Cir. 1985)	Latin cross and spanish motto translating "with this we conquer" on the county seal	Violation of Establishment clause. Endorsement terminology used in second prong of Lemon Test

May v. Cooperman	780 F.2d 240, 252 (3d Cir. 1985) (Becker, J., dissenting)	Observance of one minute of silence at beginning of school day	Violation of Establishment clause using the Lemon Test. Dissent discusses endorsement analysis
Aguillard v. Edwards	765 F.2d 1251 (5th Cir. 1985)	State statute requiring teaching of creation along with evolution	Violation of Establishment clause. Endorsement terminology incorporated in Lemon Test
Grove v. Mead School District	753 F.2d 1528 (9th Cir. 1984) (Canby, J., concurring)	School Board refusal to remove book from sophomore English curriculum based on parents religious objection	No violation of Establishment Clause. Concurrence incorporates endorsement analysis in second prong of Lemon Test

District Courts

Chabad-Lubavitch of Vermont v. City of Burlington	754 F. Supp. 372 (D. Vt. 1990)	Menorah in city park closely identified with city hall	Violates Establishment clause under endorsement analysis
Murray v. City of Austin, Travis County, Texas	744 F. Supp. 823 (W.D. Tex. 1990)	City seal with latin cross based on founders coat of arms	No violation to Establishment Test. Endorsement terminology incorporated in second prong of Lemon Test

Joki v. Board of Education of Schuylerville, Cent. S.D.	745 F. Supp. 823 (N.D.N.Y. 1990)	Public school displaying painting with religious theme in high school auditorium	Violation of Establishment clause. Endorsement analysis incorporated in second prong of Lemon Test
Minnesota Federation of Teachers v. Nelson	740 F. Supp. 694 (D. Minn. 1990)	State act allowing public high school students to receive high school credit by taking courses at post secondary institutes—some religious	No violation of Establishment clause. Endorsement terminology incorporated in second prong of Lemon Test
Cohen v. City of Des Plaines	742 F. Supp. 458 (N.D. Ill. 1990)	State requiring special permit to operate day care center in single family resident district but not for day care centers in church building in same district	No violation of Establishment clause. Endorsement terminology incorporated into Lemon Test
ACLU v. County of Delaware	726 F. Supp. 184 (S.D. Ohio 1989	Nativity scene on courthouse lawn	Violation of Establishment clause. Endorsement analysis used in second prong of Lemon Test

Doe v. Small	726 F. Supp. 713 (N.D. Ill. 1989)	Private organization's display in city park of a painting depicting the life of Christ	Violation of Establishment clause. Endorsement analysis incorporated in Lemon Test
EEOC v. Jefferson Smurfit Corporation	724 F. Supp. 881 (M.D. Fla.	Civil Rights statute forbidding employment discrimination on the grounds of religion	No Violation of Establishment clause. Endorsement terminology use along with Lemon Test
ACLU V. Wilkinson	701 F. Supp. 1296 (E.D. Ky. 1988)	State construction and use of structure resembling a biblical age stable on the grounds of the state capital which was intended to be limited for use in nativity pageants	No violation if stage is made available to all groups and not limited for use in nativity pageants and if state posts a disclaim as to the endorsement of religion
Kaplan v. City of Burlington	700 F. Supp. 1315 (D.Vt 1988)	Menorah in city hall during Hanukkah	No violation of Establishment clause. Endorsement analysis incorporated in second prong of the Lemon Test

Smith v. Lindstorm	699 F. Supp. 549 (W.D. Va. 1988)	Erection of nativity scene on front lawn of county office building	Violation of Establishment clause. Endorsement analysis discussed in context of second prong to the Lemon Test
Jewish War Veterans v. United States	695 F. Supp. 3 (D.D.C. 1988)	Large cross on Marine Corp base	Violation of Establishment clause. Endorsement terminology used in second prong of Lemon Test
Ford v. Manuel	629 F. Supp. 771 (N.D. Ohio 9185)	School districts practice of renting elementary school building to weekday religious educational council immediately before and after school hours for conduction of religious classes	Violation of Establishment clause. Endorsement terminology incorporated in Lemon Test

Fausto v. Diamond	589 F. Supp. 451 (D.R.I. 1984)	Continuous display, maintenance and preservation of a memorial dedicated to the "Unknown Child" on municipal property	No violation of Establishment clause. Endorsement terminology incorporated in second prong of Lemon Test. Lemon Test reduced to two prongs—effect and purpose
Amico v. New Castle County	101 F.R.D. 472 (1984)	Zoning ordinance prohibiting siting of adult entertainment center within 2800 feet of church or school	No violation of Establishment clause. Endorsement terminology incorporated in second prong of Lemon Test